

Orchard Enterprises, Inc.
Form PRER14A
June 07, 2010

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

**SCHEDULE 14A
(AMENDMENT No. 1)**

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

Filed by the Registrant
Filed by a Party other than the Registrant
Check the appropriate box:

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

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):

No fee required.
 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)

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(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

x Fee paid previously with preliminary materials.

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. 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 JUNE 7, 2010**

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

To Our Stockholders:

On July , 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 June , 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. Dimensional Associates is The Orchard s majority stockholder and holds, along with its affiliates, approximately 54% of The Orchard s voting stock as of the record date for the annual meeting.

If the merger is completed, our stockholders, other than Dimensional Associates and its affiliates and stockholders who properly exercise and perfect their appraisal rights under Delaware law, 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. In addition, each stockholder, other than Dimensional Associates and its affiliates and stockholders who properly exercise and perfect their appraisal rights under Delaware law, will receive 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.

Upon completion of the proposed merger, we will cease to be a publicly traded company and Dimensional Associates will own more than 99% of our outstanding securities, 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 The Orchard s 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 are expected to be terminated. In addition, upon completion of the merger, shares of our common stock will no longer be listed on the Nasdaq Stock Market.

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 Orchard 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

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the annual meeting to approve the merger and to approve and adopt the merger agreement. The proposal to amend our Certificate of Designations is conditioned upon and subject to the approval of the merger agreement and the transactions contemplated thereby. If the merger agreement proposal is not approved, the Certificate of Designations proposal will not be presented at the meeting. 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 our voting securities entitled to vote on the matter, other than voting securities held by Dimensional Associates and its affiliates, 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 June , 2010, and is first being mailed to stockholders on or about June , 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 July , 2010

To Our Stockholders:

On July , 2010, The Orchard Enterprises, Inc., a Delaware corporation (the Company or The 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:

- 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).
- 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. The Certificate Amendment Proposal is conditioned upon and subject to the approval of the Merger Proposal. If the Merger Proposal is not adopted, the Certificate Amendment Proposal will not be presented at the meeting.
- 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.
- 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).
- 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 June , 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

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must (i) submit a written demand for an appraisal prior to the stockholder vote on the merger agreement, (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 registered 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 on July , 2010. Our proxy statement is attached. Financial and other information concerning The Orchard is contained in (1) 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, as amended on April 30, 2010, a copy of which is enclosed with this proxy statement as part of our 2009 Annual Report to Stockholders and (2) our Quarterly Report on Form 10-Q for the quarter ended March 31, 2010 filed with the SEC on May 14, 2010, a copy of which is enclosed with this proxy statement. This proxy statement, our fiscal 2009 Annual Report and our Quarterly Report on Form 10-Q 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
June , 2010

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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 62)

The Orchard Enterprises, Inc., a Delaware corporation, controls and distributes more than 2.1 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, 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 64)

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, 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. The Orchard will be the surviving corporation in the merger, 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, 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 64)

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 . 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

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prior to the consummation of the merger, as calculated in accordance with the terms of the merger agreement. 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 66)

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 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 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.

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

Interests of Certain Persons in the Merger (Page 50)

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;

the acceleration of and payment for outstanding restricted stock awards held by our officers and directors as a result of the merger, which have a pre-tax value of:

\$17,372 for Bradley Navin;

\$22,784 for Nathan Fong;

\$14,526 for Steve Haase;

\$37,099 for Michael Donahue; and

\$26,498 for each of David Altschul, Viet Dinh, Nathan Peck and Joel Straka;

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 in the amount of \$80,000 paid to Michael Donahue for his service as chairman for both the special committee and the search committee of the board of directors and compensation in the amount of \$15,000 paid to each of Messrs. Altschul, Dinh, Peck and Straka for their service on the special committee; and

a retention arrangement for our senior vice president, general counsel and secretary providing for continued employment at her current annual salary until December 31, 2010.

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 62)

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

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- (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 23)

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 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.

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 29 and Appendix C)

Fesnak and Associates, LLP, 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.

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 72)

Until 12:01 a.m., Eastern Daylight Time, on April 22, 2010, we and our subsidiaries and 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

enter into or otherwise participate in any discussions or negotiations with respect to Acquisition Proposals.

From April 22, 2010 until the earlier of the effective time of the merger and the termination of the merger agreement, we and our subsidiaries and representatives are required not to, directly or indirectly: solicit, initiate, induce or take any action for the purpose of encouraging any proposal that constitutes or could reasonably be expected to lead to an Acquisition Proposal;

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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 any Acquisition Proposal;

approve or enter into any 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 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 77)

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:

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 to amend the Certificate of Designations of the Series A convertible preferred 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;

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the absence of a Company Material Adverse Change (as defined under The Merger Agreement Definition of Company Material Adverse Change) 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 78)

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 causes or results 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
- (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:

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

- (1) 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:

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

- (1) 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;

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- (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 79)

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 59)

As of June , 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, 271,554 shares of our common stock, which represented approximately 3.5% of the outstanding shares of our voting 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.

Rights of Appraisal (Page 66)

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, (3) continue to hold your shares until the consummation of the merger and (4) otherwise comply with the Delaware law procedures for exercising appraisal rights. For a summary of these Delaware law procedures, see 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.

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.

Market Price of Our Common Stock (Page 83)

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 June 4, 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 52)

The receipt of the per share merger consideration and the per share additional consideration, as applicable, by a U.S. holder of shares of our common stock will be a taxable transaction for U.S. federal income

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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. The merger is not expected to have any material U.S. federal income tax consequences to The Orchard, Dimensional Associates, Merger Sub, JDS Capital, L.P., JDS Capital Management, LLC, Joseph D. Samberg or Daniel C. Stein. Please see the section entitled Material United States Federal Income Tax Consequences of the Merger 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 July , 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 June , 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. The Certificate Amendment Proposal is conditioned upon and subject to the approval of the Merger Proposal. If the Merger Proposal is not adopted, the Certificate Amendment Proposal will not be presented at the meeting.

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.

Our board of directors recommends that you vote FOR each of the proposals.

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 June , 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 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. The Certificate Amendment Proposal is conditioned upon and subject to the approval of the Merger Proposal. If the Merger Proposal is not adopted, the Certificate Amendment Proposal will not be presented at the meeting. 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. 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 electronic 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.

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

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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 registered 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.

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.

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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 registered 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 registered public accounting firm or the approval of the Adjournment Proposal.

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 Securities Exchange Act of 1934, as amended, which we refer to as 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.

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 2009 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 and amended on April 30, 2010, excluding certain of its exhibits, Quarterly Report on Form 10-Q for the quarter ended March 31, 2010 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, Quarterly Report on Form 10-Q 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. As of June , 2010, Dimensional Associates and its affiliates (which includes Mr. Stein) collectively held approximately 54% of our outstanding voting stock. As of June , 2010, Mr. Stein individually held approximately 0.3% of our outstanding voting stock. 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. In connection with its formation of the special committee on November 14, 2008 (described below), the board of directors determined that it was advisable and in the best interest of The Orchard to approve and authorize each of the foregoing matters. 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. The Company did not act on a waiver permitting Dimensional Associates to retain Reed Smith LLP because discussions with potential buyers never progressed to a point where a waiver would have been required, as described more fully below. Upon conferring with our general counsel and reviewing our Security Trading Policy and Special Policy on Securities Trading for Directors, a special blackout period was imposed prohibiting the board of directors and certain management employees 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 none of Messrs. Michael Donahue, Viet Dinh, Nathan Peck or Joel Straka had a financial interest in the transaction different from the other stockholders or an indirect interest in the transaction. The board of directors also determined that the transaction would not entrench management or directors and that none of the decisions at issue would have a detrimental impact on any of Messrs. Donahue, Dinh, Peck or Straka.

Consequently, the board of directors determined that each of Messrs. Donahue, Dinh, Peck and 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.

In evaluating the independence of Messrs. Donahue and Dinh, the board of directors discussed Dimensional Associates' designation of Messrs. Donahue and Dinh as members of the board of directors in connection with the merger of The Orchard's wholly owned acquisition subsidiary with and into the former The Orchard Enterprises Inc. (a New York corporation now named Orchard Enterprises NY, Inc.). See Historical Relationship Between Dimensional Associates and The Orchard. The board of directors also

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considered that Dimensional Associates' ability to designate Messrs. Donahue and Dinh as directors was a one-time right and that each of Messrs. Donahue and Dinh had twice been re-elected to the board of directors subsequent to the original designation by Dimensional Associates, including by a majority of the stockholders other than Dimensional Associates and its affiliates in 2008. The board of directors also considered that neither Mr. Donahue nor Mr. Dinh had any prior or other relationships with Dimensional Associates and neither holds an ownership interest in or management position with Dimensional Associates nor received any compensation by Dimensional for their service. 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 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.

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 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.

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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 five meetings, on November 25, 2008, December 17, 2008, February 18, 2009, March 13, 2009 and April 17, 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, 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 (Messrs. Donahue, David Altschul, Dinh, Peck and 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, 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, 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

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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, 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 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.

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On October 28, 2009, the special committee engaged Fesnak and Associates, LLP, 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 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 stockholder 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 stockholder 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 interest 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.

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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.

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.

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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 interest 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 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.

The special committee determined the range of \$2.05 to \$2.15 based on its knowledge of The Orchard and its discussions with Fesnak, its financial

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advisor. Fesnak had made two detailed presentations about its valuation analysis of The Orchard, and the special committee had been in active, detailed negotiations with Dimensional Associates regarding the value of The Orchard for six weeks.

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.

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,

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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 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.

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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.

On March 4, 2010, 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, 2010, 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.

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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.

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 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.

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The Delaware action, *Rapfogel Partners Ltd. v. Donahue et al.*, CA No. 53571-VCS, alleges breach of fiduciary duty by the members of The Orchard board of directors who serve on the special committee by failing to engage in an honest and fair sale process and by agreeing to a transaction pursuant to which the minority stockholders may receive inadequate and unfair consideration for their shares of common stock of The Orchard. The plaintiff, who purports to represent the class of all owners of The Orchard's common stock (except for the litigation defendants and their affiliates), also asserts breach of fiduciary duty claims against the members of The Orchard board of directors who do not serve on the special committee, Dimensional Associates and Merger Sub and names The Orchard as an additional defendant. We have been informed that Bidder B is a nephew of the plaintiff. The action has been assigned to Vice Chancellor Strine of the Delaware Chancery Court. On May 5, 2010, the plaintiff filed an amended complaint and on May 6, 2010, the plaintiff filed two motions seeking expedited proceedings and a preliminary injunction with the Delaware Chancery Court. On May 21, 2010, Vice Chancellor Strine held a scheduling hearing at which he declined to schedule a hearing on a preliminary injunction, and ordered the parties to engage in expedited pre-trial document discovery. On May 28, 2010, the defendants filed answers with the court denying all substantive allegations in the plaintiff's complaint. The parties began delivery of pre-trial discovery on June 4, 2010.

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 .

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

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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.

The special committee determined that the proposed merger was advisable at this time because changes in the digital content distribution industry described below under *Nature of Challenges* have increased the risk of The Orchard's continuing as a standalone public company. The special committee believes that addressing these challenges involves increased risk to the ability of The Orchard to maintain and increase stockholder value in the long term, and the opportunity to provide unaffiliated stockholders with concrete value at this time is in the best interests of the stockholders.

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 and advisability:

Nature of Challenges.

The special committee considered 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 special committee determined that continuing as an independent company in light of these factors would increase the risk that The Orchard would be unable to maintain and increase stockholder value in the future. Given this risk, the special committee determined that providing the stockholders with certain return in the near term was the best option for maximizing stockholder value.

The special committee considered the outlook for, and conditions facing, the digital content distribution industry, including declining growth rates, contracting gross margins and fundamental consolidation and realignment in the industry. The ability of companies in the digital content distribution industry to increase or even maintain pricing is weakening and prices are declining. The special committee determined that these changes in the industry could erode the financial prospects of The Orchard and render uncertain the ability of The Orchard to maintain and increase stockholder value in the long term.

The special committee considered 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. Companies in the digital content distribution industry have rapidly increasing capital needs to fund advanced technology to capture and distribute content and provide data analytics to support marketing efforts. Smaller digital distributors like The Orchard must increasingly identify sources of significant capital investment in order to maintain and increase their position in the industry. The special committee determined that the difficulties of identifying ongoing sources of capital increased the risk of remaining an independent company and would hinder The Orchard's ability to maintain and increase stockholder value in the long term.

The special committee considered 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. As a standalone entity, The Orchard would need to increase its size to create improved operating margins and to generate additional funding to be competitively advantaged going forward. The special committee determined that our lack of profitability and difficulties in increasing our profitability significantly limit the opportunities for The Orchard to increase its size, and, as a result, increase the risk of maintaining and increasing stockholder value in the long term.

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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 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. The special committee believes that the absence of another merger or acquisition transaction that would result in a higher price for our unaffiliated stockholders supports its conclusion that the proposed merger is fair to our unaffiliated stockholders because it indicates that there are no other parties willing to pay a premium for the shares held by our unaffiliated stockholders. In addition, the fact that Dimensional will not need to finance the merger consideration means that the unaffiliated stockholders will receive a cash payment with a premium to market for their shares in the near term with relatively little risk other than the risk of the transaction not being consummated.

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 Fesnak's 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

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announcement of the Dimensional Proposal. The special committee believes that historical market prices of our common stock for periods in excess of ninety days prior to the announcement of the proposal by Dimensional Associates are less relevant indicators of fairness than current prices. In 2008 and 2009, the economy experienced a significant recession, and the stock market saw unprecedented volatility. In addition, the digital content distribution industry experienced and continues to experience rapid evolution. Instead of focusing on historical market prices, the special committee considered the price of our common stock at the time of the announcement of the Dimensional Proposal. Because our common stock is thinly traded and its price is volatile, the special committee decided to confirm its consideration of the premium by referring to a 90-day average immediately prior to the announcement for the purpose of smoothing out market volatility.

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. Dimensional Associates supported the special committee's go-shop activities, and Craig-Hallum informed potential interested parties that Dimensional Associates would be a willing seller of its Series A convertible preferred stock if it received its liquidation preference for such stock. The special committee believes that this active solicitation process, which included a three-month period in 2008 and early 2009 when Dimensional Associates itself solicited potential purchasers of its position, a four-month period in 2009 and early 2010 after we announced publicly that we were considering a proposal from Dimensional Associates while not being bound by any exclusivity obligations, and a 37-day go-shop period when the special committee, with the support of Dimensional Associates, solicited parties interested in buying The Orchard, resulted in a comprehensive search for alternatives to maximize stockholder value.

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 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 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

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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.

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.

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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 flows 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 flows 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 and because it was based on revenue calculations, which do not take cost structure into account.

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. Our book value at September 30, 2009 was \$12.8 million, and tangible net book value, book value excluding goodwill of \$12.35 million and intangible assets of \$5.65 million, was negative at September 30, 2009. As a result, it is unlikely that our assets could be sold individually for a significant amount of value. In addition, liquidation was not considered to be a viable alternative because a liquidation event would trigger our contractual obligation to pay the holders of our Series A convertible preferred stock a liquidation preference of approximately \$24.99 million. This payment would have been in excess of any reasonable amount received in consideration for our assets. The special committee believes that The Orchard as a going concern has a higher value than its liquidation value.

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 bargaining between the special committee (and its counsel) and Dimensional Associates (and its counsel), with the participation of management of

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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. **You are urged 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 reviewed such other information and considered such other factors as Fesnak deemed appropriate.

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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. Fesnak initially focused its search on public companies providing digital music services. However, because of the limited number of comparable public companies in this industry, Fesnak expanded its search to include public companies providing various forms of digital media services. In addition to the general characteristics described above, Fesnak focused on companies with similar financial characteristics, including revenues that were no more than ten times The Orchard's reported results. After discussions with The Orchard's management and its own analysis, Fesnak selected the following nine publicly traded companies to serve as comparables:

Glu 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 originally included a tenth company, Fluid Music Canada, Inc., which was excluded from this analysis because the company had undertaken a significant corporate acquisition in late 2009. This one-time, non-operating event significantly influenced the stock price, and Fesnak determined that it created an artificial bias in the valuation.

No other comparable companies fit the criteria established by Fesnak.

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.

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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.

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. For each company, Fesnak calculated a market value of invested capital, which we refer to as MVIC. MVIC was calculated by first multiplying the aggregate number of common shares outstanding for each company by the closing price per share of its common stock on March 10, 2010. To this aggregate number, Fesnak added interest bearing debt and subtracted cash and marketable securities, to reach a MVIC for each company. Fesnak then compared the MVIC calculations for each company to its revenue and EBITDA in order to establish multiples of MVIC to Revenue and MVIC to EBITDA for the comparable companies.

Because we had a loss from operations and negative EBITDA for the twelve months ended September 30, 2009, MVIC to EBITDA calculations would not have produced a meaningful indication of value for The Orchard. As an alternative, Fesnak applied MVIC multiples for the last twelve months to The Orchard's revenues, rather than more commonly used income multiples, such as MVIC to EBITDA. However, MVIC to Revenue multiples are instructive but less reliable indicators of value than MVIC to EBITDA multiples because they do not take into account a company's cost structure. Because the MVIC to EBITDA multiple is instructive and more typical, Fesnak also applied the comparable companies' MVIC to EBITDA multiples to The Orchard's forecasted EBITDA for 2010 (which is projected to be positive). The multiples calculated by Fesnak for the comparable companies are as follows:

Selected Pricing Multiple	Industry Multiples				
	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 most of 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.

Fesnak reduced The Orchard's equity value indications by the aggregate value of the Series A convertible preferred stock liquidation preference in its Comparable Public Company Analysis and in its Selected Relevant Transactions Analysis described below in order to reflect all economic ownership rights and contractual obligations of The Orchard. In certain standard corporate events, The Orchard has a contractual obligation to pay the holders of its Series A convertible preferred stock its liquidation preference prior to any payments to the holders of our common stock. Although this payment will be made inapplicable in connection with the proposed merger, The Orchard's contractual

obligation to pay this liquidation preference is ongoing and will remain a liability after the consummation of the proposed merger. When calculating the value of the common equity of The Orchard by comparison to other public companies, this ongoing liability must be accounted for.

In order to convert the indicated values calculated under the Comparable Public Company Analysis for The Orchard to a controlling value, Fesnak added a 20% control premium, based on data provided by Mergerstat BVR Control Premium Studies.

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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 and because MVIC to Revenue calculations do not take into account The Orchard's cost structure.

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. In addition to the general characteristics described above, Fesnak focused on transactions that were consummated within the last five years by companies with revenues that were no more than ten times the reported results for The Orchard. Fesnak included in its analysis all transactions that met the search criteria described above.

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

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:

Selected Pricing Multiple MVIC/Revenues	Industry Multiples				
	Low	High	Mean	Median	Selected
	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

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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.

Fesnak believes that historical market prices of our common stock prior to the announcement of the proposal by Dimensional Associates are less relevant indicators of fairness than current prices. In 2008 and 2009, the economy experienced a significant recession, and the stock market saw unprecedented volatility. Instead of focusing on historical market prices, for this portion of its analysis, Fesnak considered the price of our common stock at the time of the announcement of the proposed merger in relation to a standard control premium in our industry.

Discounted Cash Flows Analysis

Based on cash flow forecasts provided by our management in November 2009, Fesnak performed a discounted cash flows 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.

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 flows 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 flows 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

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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 extensive 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.

Preliminary Presentations and Discussions by the Special Committee's Financial Advisor

Fesnak was engaged to be the financial advisor to the special committee on October 28, 2009. Prior to delivering the Fesnak Opinion on March 15, 2010 described above, Fesnak made preliminary presentations to and held discussions with the special committee regarding its valuation analysis on November 12, 2009, November 24, 2009, December 23, 2009 and January 12, 2010. The following provides a summary of the material financial analyses and procedures presented by Fesnak to the special committee during each of these presentations.

November 12, 2009 Presentation

At a meeting of the special committee on November 12, 2009, Fesnak presented its first valuation analysis of The Orchard. This valuation analysis included a Comparable Public Company Analysis, a Selected Relevant Transactions Analysis and a Discounted Cash Flows Analysis. The methodology of each of these analyses during this presentation was the same as described above for Fesnak's final presentation. Fesnak provided the special committee with draft

materials for each of the analyses described below.

The meeting was called by the special committee and was attended by Messrs. Donahue, Altschul, Dinh, Straka and Peck of the special committee, Messrs. John P. Schmitt and Edward H. Smoot of Patterson Belknap and Messrs. Robert W. Fesnak and Kevin P. Henry of Fesnak.

Comparable Public Company Analysis

Fesnak presented its Comparable Public Company Analysis and used the same nine public companies used in its final analysis. In addition, for this presentation Fesnak included a tenth company, Fluid Music Canada, Inc., which was excluded from its final analysis because the company had undertaken a significant corporate acquisition in late 2009. This one-time, non-operating event significantly influenced the stock price,

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and Fesnak determined that it created an artificial bias in the valuation. No other comparable companies fit the criteria established by Fesnak. Fesnak provided the special committee with descriptions of each of these companies and their businesses taken from the companies' public filings and other publicly available sources.

In calculating and comparing various financial multiples and ratios under this method, Fesnak used results for the public comparables as of June 30, 2009 and stock prices as of October 27, 2009. Because The Orchard had a loss from operations and negative EBITDA for the twelve months ended September 30, 2009, Fesnak applied MVIC multiples for the last twelve months to The Orchard's revenues, rather than its EBITDA. The multiples calculated by Fesnak for the comparable companies are as follows:

Selected Pricing Multiple	Industry Multiples				
	Low	High	Mean	Median	Selected
MVIC/Revenues	0.21	15.36	2.18	0.53	0.53

Fesnak selected the median multiple of 0.53 for the MVIC to Revenue calculation because our financial results during the analysis period were in line with the comparable companies except for the liquidity ratios, which were below the public comparables.

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 \$4.695 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 and (ii) the application of a 25% control premium in order to determine equity value on a controlling interest basis.

In order to convert the indicated values calculated under the Comparable Public Company Analysis for The Orchard to a controlling value, Fesnak added a 25% control premium based on data provided by Mergerstat BVR Control Premium Studies for the information retrieval services industry in which The Orchard operates. The average control premium for this industry is 26.8% with a median of 24.6% according to Mergerstat. Fesnak subsequently reduced the control premium in its final analysis to 20% because it determined that The Orchard's business did not align exactly with the information retrieval services industry. Fesnak also considered the miscellaneous publishing industry control premiums, which average 20.4% with a median of 7.5%. Ultimately, Fesnak selected a blended rate of 20% for its final analysis.

Based on the multiples and adjustments described above, Fesnak calculated an aggregate controlling, marketable equity value for The Orchard of \$46.76 million. For this presentation, Fesnak did not calculate the implied per share value of the common stock under this method, but instead used this aggregate equity value to determine a blended aggregate equity value from which it calculated a per share value as described below.

Selected Relevant Transactions Analysis

Fesnak presented its Selected Relevant Transactions Analysis using the same methodology described above for its final presentation and the same ten transactions as it used in its final presentation. The MVIC to revenue multiples calculated by Fesnak for this presentation are as follows:

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

As with its final presentation, Fesnak selected a multiple of 0.60 for this MVIC to Revenue calculation, which was between the low and the median. Based on these multiples, Fesnak calculated an aggregate equity value for The Orchard of \$37.04 million. For this presentation, Fesnak did not calculate the implied per share value of the common stock under this method, but instead used this aggregate equity value to determine a blended aggregate equity value from which it calculated a per share value as described below.

Discounted Cash Flows Analysis

Fesnak presented its Discounted Cash Flows Analysis using the same methodology described above for its final presentation and used cash flow forecasts provided by our management in November 2009. A sensitivity analysis was also performed using management's neutral case, worst case and aggressive case scenarios. Fesnak assigned the following weighted probability values to each scenario: neutral case, 60%, aggressive

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case, 20%, and worst case, 20%. Management's neutral case received the greatest weighting because Fesnak considered it to be the most likely outcome. The aggressive and worst case scenario received less but equal weighting because each was considered to have the same likelihood of occurring.

The Discounted Cash Flows Analysis completed by Fesnak for this preliminary analysis assumed The Orchard would remain a public company and that it would continue to take advantage of its net operating tax loss carryforwards, which are referred to as NOLs. The aggressive case scenario produced an enterprise value of \$37.10 million, from which Fesnak calculated an implied value of \$1.89 per share of our common stock. The neutral case scenario produced an enterprise value of \$31.63 million, from which Fesnak calculated an implied value of \$1.04 per share of our common stock. The worst case scenario produced an enterprise value of \$19.74 million, from which Fesnak calculated an implied value of \$0.00 per share of our common stock. Fesnak then applied a weighted average analysis to these values using the percentages described above, which resulted in an implied value of \$1.00 per share for our common stock.

Preliminary Indication of Value

Fesnak then applied a weighted average calculation to the aggregate indicated equity values that it calculated using these three valuation methods. Fesnak applied a 20% weight to the value calculated using the Comparable Public Company Analysis, and 40% weight to each of the values calculated using the Selected Relevant Transactions Analysis and the Discounted Cash Flows Analysis. Fesnak applied greater weight to the Selected Relevant Transactions Analysis and the Discounted Cash Flows Analysis because the Discounted Cash Flows Analysis is based on forecasts and data from The Orchard itself and the Selected Relevant Transactions Analysis is based on the value of similar companies experiencing similar corporate transactions. This weighted average calculation resulted in an aggregate indicated equity value of The Orchard of \$36.31 million. Fesnak then subtracted approximately \$24.99 million from this overall value, representing the contractual liquidation preference of our outstanding Series A convertible preferred stock, resulting in a residual value of \$11.31 million available to the holders of our common stock. Fesnak then divided this residual value by 6,396,000, the approximate number of shares of our common stock outstanding at the time of the presentation, which resulted in a per share value of our common stock of \$1.77.

The special committee discussed the presentation with Fesnak and requested that Fesnak provide the special committee with more information about the financial metrics of the companies selected for the Comparable Public Company Analysis. The special committee also asked Fesnak to consider several factors in its next presentation to the special committee. First, the special committee asked Fesnak to assume that the transaction will result in cost savings to Dimensional as a result of the company being private. Second, the special committee asked Fesnak to assume that the transaction would produce synergies when Dimensional combined the assets of The Orchard with Dimensional's other portfolio companies. Third, the special committee asked Fesnak to consider whether Dimensional would be in a position to utilize The Orchard's NOLs. For each of these factors, the special committee asked Fesnak to assume that Dimensional would share some portion of the value of these factors with the unaffiliated stockholders. The special committee also asked Fesnak to conduct its Discounted Cash Flows Analysis using a 17% discount rate and a 20% discount rate.

November 24, 2009 Presentation

At a meeting of the special committee on November 24, 2009, Fesnak made its second presentation regarding its valuation analysis of The Orchard. This valuation analysis included a Comparable Public Company Analysis, a Selected Relevant Transactions Analysis and a Discounted Cash Flows Analysis. The methodology of each of these analyses during this presentation was the same as described above for Fesnak's final presentation. Fesnak provided the special committee with draft materials for each of the analyses described below.

The meeting was called by the special committee and was attended by Messrs. Donahue, Altschul, Dinh, Straka and Peck of the special committee, Messrs. Schmitt and Smoot of Patterson Belknap and Ms. Lisa McLemore and Messrs. Fesnak, Henry and W. Michael Wolfe of Fesnak.

Comparable Public Company Analysis

Fesnak presented its Comparable Public Company Analysis and used the same ten public companies used in its first presentation. As had been requested at the first presentation, Fesnak provided the special committee

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with more detailed information about the financial metrics of the companies selected for this analysis and a comparison with those of The Orchard.

In calculating and comparing various financial multiples and ratios under this method, Fesnak used results as of September 30, 2009 and stock prices as of November 13, 2009. Because The Orchard had a loss from operations and negative EBITDA for the twelve months ended September 30, 2009, Fesnak applied MVIC multiples for the last twelve months to The Orchard's revenues, rather than its EBITDA. The multiples calculated by Fesnak for the comparable companies are as follows:

Selected Pricing Multiple	Industry Multiples				
	Low	High	Mean	Median	Selected
MVIC/Revenues	0.21	14.54	2.08	0.50	0.50

Fesnak selected the median multiple of 0.50 for the MVIC to Revenue calculation because our financial results during the analysis period were in line with the comparable companies except for the liquidity ratios, which were below most of the public comparables.

In order to calculate a residual value available to the holders of our common stock, Fesnak made the same adjustments to the analysis as it had in its first presentation, including (i) adding back \$4.695 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 and (ii) the application of a 25% control premium in order to determine equity value on a controlling interest basis.

Based on the multiples and adjustments described above, Fesnak calculated an aggregate controlling, marketable equity value for The Orchard of \$44.45 million. The aggregate equity value of The Orchard under this method decreased by approximately \$2.32 million from the value calculated in Fesnak's first presentation because the median multiple from the comparable companies decreased as a result of a decrease in market values of the comparable companies. For this presentation, Fesnak did not calculate the implied per share value of the common stock under this method, but instead used this aggregate equity value to determine a blended aggregate equity value from which it calculated a per share value as described below.

Selected Relevant Transactions Analysis

Fesnak presented its Selected Relevant Transactions Analysis using the same methodology described above for its final presentation and the same ten transactions as it used in its final presentation. The MVIC to revenue multiples calculated by Fesnak for this presentation are as follows:

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

As with its first presentation, Fesnak selected a multiple of 0.60 for this MVIC to Revenue calculation, which was between the low and the median. Based on these multiples, Fesnak calculated an aggregate equity value for The Orchard of \$37.04 million. For this presentation, Fesnak did not calculate the implied per share value of the common stock under this method, but instead used this aggregate equity value to determine a blended aggregate equity value from which it calculated a per share value as described below.

Discounted Cash Flows Analysis

Fesnak presented its Discounted Cash Flows Analysis using the same methodology described above for its final presentation and using updated cash flow forecasts provided by our management on November 23, 2009. Management had revised its forecasts downward in light of additional sales data that it had received. A sensitivity analysis was also performed using management's neutral case (also called base case), worst case and aggressive case scenarios. Fesnak assigned the following weighted probability values to each scenario - neutral case, 50%, aggressive case, 50%, and worst case, 0%. Management's worst case scenario received a weighting of 0% because under such a scenario, the holders of common stock would receive no value, and the special committee would not consider a transaction pursuant to which the unaffiliated shareholders received no consideration. For this presentation, the aggressive and neutral case scenarios received equal weighting because each was considered to have the same likelihood of occurring.

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Fesnak also considered the private company cost savings that Dimensional Associates would achieve by taking The Orchard private and the synergies that Dimensional Associates would achieve by combining The Orchard with other digital media assets it held. It assumed that as a private company The Orchard would save approximately \$780,000 per year and that the synergies of combining The Orchard with other assets of Dimensional would result in savings of approximately \$1.04 million. These amounts were added directly as debt free cash flow.

When Fesnak included the aggregate amount of these private company costs savings and synergies in its Discounted Cash Flows Analysis, it calculated the following values for The Orchard. The aggressive case scenario produced an enterprise value of \$45.21 million, from which Fesnak calculated an implied value of \$3.16 per share of our common stock. The neutral case scenario produced an enterprise value of \$38.55 million, from which Fesnak calculated an implied value of \$2.12 per share of our common stock. Fesnak then applied a weighted average analysis to these values using the percentages described above, which resulted in an implied value of \$2.64 per share for our common stock.

Without these private company costs savings and synergies, Fesnak calculated the following values for The Orchard.

The aggressive case scenario produced an enterprise value of \$32.60 million, from which Fesnak calculated an implied value of \$1.19 per share of our common stock. The neutral case scenario produced an enterprise value of \$25.94 million, from which Fesnak calculated an implied value of \$0.15 per share of our common stock. Fesnak then applied a weighted average analysis to these values using the percentages described above, which resulted in an implied value of \$0.67 per share for our common stock.

At the request of the special committee, Fesnak also ran its Discounted Cash Flows Analysis without these private company costs savings and synergies at a discount rate of 17%. The aggressive case scenario produced an enterprise value of \$39.46 million, from which Fesnak calculated an implied value of \$2.26 per share of our common stock. The neutral case scenario produced an enterprise value of \$31.41 million, from which Fesnak calculated an implied value of \$1.00 per share of our common stock. Fesnak then applied a weighted average analysis to these values using the percentages described above, which resulted in an implied value of \$1.63 per share for our common stock.

Preliminary Indication of Value

Fesnak then applied a weighted average calculation to the aggregate indicated equity values that it calculated under these three valuation methods. In order to demonstrate the effect of the weighting, Fesnak applied three different weightings to its calculations and conducted its Discounted Cash Flows Analyses at a 20% discount rate and a 17% discount rate.

First, Fesnak applied a 20% weight to the value calculated using the Comparable Public Company Analysis, and 40% weight to each of the values calculated using the Selected Relevant Transactions Analysis and the Discounted Cash Flows Analysis, which was the same weighting used in Fesnak's first presentation to the special committee. This weighted average calculation resulted in an aggregate indicated equity value of The Orchard of \$35.41 million at the 20% discount rate, and \$37.88 million at the 17% discount rate. Fesnak then subtracted approximately \$24.99 million from these values, representing the contractual liquidation preference of our outstanding Series A convertible preferred stock, resulting in residual values of \$10.42 million and \$12.89 million available to the holders of our common stock at 20% and 17% discount rates, respectively. Fesnak then divided these residual values by 6,395,000, the approximate number of shares of our common stock outstanding at the time of the presentation, which resulted in a per share value of our common stock of \$1.63 at the 20% discount rate and \$2.02 at the 17% discount rate.

Second, Fesnak weighted the three methods equally, applying a 34% weight to the value calculated using the Comparable Public Company Analysis, and 33% weight to each of the values calculated using the Selected Relevant

Transactions Analysis and the Discounted Cash Flows Analysis. This weighted average calculation resulted in an aggregate indicated equity value of The Orchard of \$36.99 million at the 20% discount rate, and \$39.03 million at the 17% discount rate. Fesnak then subtracted approximately \$24.99 million from these values, representing the contractual liquidation preference of our outstanding Series A convertible preferred stock, resulting in residual values of \$12.0 million and \$14.04 million available to the holders of our common stock at 20% and 17% discount rates, respectively. Fesnak then divided these residual

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values by 6,395,000, the approximate number of shares of our common stock outstanding at the time of the presentation, which resulted in a per share value of our common stock of \$1.88 at the 20% discount rate and \$2.19 at the 17% discount rate.

Third, Fesnak applied a 50% weight to the value calculated using the Comparable Public Company Analysis, and 25% weight to each of the values calculated using the Selected Relevant Transactions Analysis and the Discounted Cash Flows Analysis. This weighted average calculation resulted in an aggregate indicated equity value of The Orchard of \$38.80 million at the 20% discount rate, and \$40.34 million at the 17% discount rate. Fesnak then subtracted approximately \$24.99 million from these values, representing the contractual liquidation preference of our outstanding Series A convertible preferred stock, resulting in residual values of \$13.81 million and \$15.35 million available to the holders of our common stock at 20% and 17% discount rates, respectively. Fesnak then divided these residual values by 6,395,000, the approximate number of shares of our common stock outstanding at the time of the presentation, which resulted in a per share value of our common stock of \$2.16 at the 20% discount rate and \$2.40 at the 17% discount rate.

Finally, Fesnak applied a 100% weight to its Discounted Cash Flows Analysis and included the aggregate value of the private company costs savings and synergies that Dimensional Associates may acquire. This calculation resulted in an aggregate indicated equity value of The Orchard of \$41.88 million. Fesnak then subtracted approximately \$24.99 million from this overall value, representing the contractual liquidation preference of our outstanding Series A convertible preferred stock, resulting in a residual value of \$16.89 million available to the holders of our common stock. Fesnak then divided this residual value by 6,395,000, the approximate number of shares of our common stock outstanding at the time of the presentation, which resulted in a per share value of our common stock of \$2.64.

The special committee reviewed the valuation analysis with Fesnak. Fesnak explained to the special committee that based on its review of The Orchard's weighted average after tax cost of debt and equity, a 20% discount rate is more appropriate than a 17% discount rate.

December 23, 2009 Presentation

At a meeting of the special committee on December 23, 2009, Fesnak made its third presentation regarding its valuation analysis of The Orchard. This valuation analysis included a Comparable Public Company Analysis, a Selected Relevant Transactions Analysis and a Discounted Cash Flows Analysis. The methodology of each of these analyses during this presentation was the same as described above for Fesnak's final presentation. Fesnak provided the special committee with draft materials for each of the analyses described below.

The meeting was called by the special committee and was attended by Messrs. Donahue, Altschul, Dinh, Straka and Peck of the special committee, Messrs. Schmitt and Smoot of Patterson Belknap and Mr. Fesnak of Fesnak.

Comparable Public Company Analysis

Fesnak presented its Comparable Public Company Analysis and used the same ten public companies used in its first two presentations. In calculating and comparing various financial multiples and ratios under this method, Fesnak used results as of September 30, 2009 and stock prices as of December 21, 2009. Because The Orchard had a loss from operations and negative EBITDA for the twelve months ended September 30, 2009, Fesnak applied MVIC multiples for the last twelve months to The Orchard's revenues, rather than its EBITDA. The multiples calculated by Fesnak for the comparable companies are as follows:

Selected Pricing Multiple	Industry Multiples				
	Low	High	Mean	Median	Selected
MVIC/Revenues	0.23	13.97	1.99	0.54	0.54

Fesnak selected the median multiple of 0.54 for the MVIC to Revenue calculation because our financial results during the analysis period were in line with the comparable companies except for the liquidity ratios, which were below most of the public comparables.

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 \$4.695 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

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calculated for the comparable companies and (ii) the application of a 25% control premium in order to determine equity value on a controlling interest basis.

Based on the multiples and adjustments described above, Fesnak calculated an aggregate controlling, marketable equity value for The Orchard of \$47.54 million. The aggregate equity value of The Orchard under this method increased by approximately \$3.09 million from the value calculated in Fesnak’s prior presentation because the median multiple from the comparable companies increased as a result of an increase in market values of the comparable companies. For this presentation, Fesnak did not calculate the implied per share value of the common stock under this method, but instead used this aggregate equity value to determine a blended aggregate equity value from which it calculated a per share value as described below.

Selected Relevant Transactions Analysis

Fesnak presented its Selected Relevant Transactions Analysis using the same methodology described above for its final presentation and the same ten transactions as it used in its final presentation. The MVIC to revenue multiples calculated by Fesnak for this presentation are as follows:

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

As with its previous presentations, Fesnak selected a multiple of 0.60 for this MVIC to Revenue calculation, which was between the low and the median. Based on these multiples, Fesnak calculated an aggregate equity value for The Orchard of \$37.04 million. For this presentation, Fesnak did not calculate the implied per share value of the common stock under this method, but instead used this aggregate equity value to determine a blended aggregate equity value from which it calculated a per share value as described below.

Discounted Cash Flows Analysis

Fesnak presented its Discounted Cash Flows Analysis using the same methodology described above for its final presentation and using updated cash flow forecasts provided by our management on December 18, 2009. A sensitivity analysis was also performed using management’s neutral case (also called base case), worst case and aggressive case scenarios. Fesnak assigned the following weighted probability values to each scenario – neutral case, 50%, aggressive case, 50%, and worst case, 0%. Management’s worst case scenario received a weighting of 0% because under such a scenario, the holders of common stock would receive no value, and the special committee would not consider a transaction pursuant to which the unaffiliated shareholders received no consideration. For this presentation, the aggressive and neutral case scenarios received equal weighting because each was considered to have the same likelihood of occurring.

Fesnak also considered the private company cost savings that Dimensional Associates would achieve by taking The Orchard private and the synergies that Dimensional Associates would achieve by combining The Orchard with other digital media assets it held. It assumed that as a private company The Orchard would save approximately \$780,000 per year and that the synergies of combining The Orchard with other assets of Dimensional would result in savings of approximately \$1.04 million. These amounts were added directly as debt free cash flow.

Fesnak also considered the effect on the value if Dimensional Associates were able to utilize our NOLs. Fesnak provided the special committee with a Discounted Cash Flows Analysis of The Orchard incorporating private company costs savings, synergies and unlimited utilization of NOLs and another Discounted Cash Flows Analysis of

The Orchard incorporating private company costs savings, synergies and an annual limitation of NOLs at \$700,000.

When Fesnak incorporated the private company costs savings, synergies and unlimited NOLs in its Discounted Cash Flows Analysis, it calculated the following values for The Orchard. The aggressive case scenario produced an enterprise value of \$42.49 million, from which Fesnak calculated an implied value of \$2.74 per share of our common stock. The neutral case scenario produced an enterprise value of \$36.33 million, from which Fesnak calculated an implied value of \$1.77 per share of our common stock. Fesnak then applied a weighted average analysis to these values using the percentages described above, which resulted in an implied value of \$2.25 per share for our common stock.

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When Fesnak incorporated the private company costs savings and synergies but limited the utilization of the NOLs in its Discounted Cash Flows Analysis, it calculated the following values for The Orchard. The aggressive case scenario produced an enterprise value of \$39.12 million, from which Fesnak calculated an implied value of \$2.21 per share of our common stock. The neutral case scenario produced an enterprise value of \$33.63 million, from which Fesnak calculated an implied value of \$1.35 per share of our common stock. Fesnak then applied a weighted average analysis to these values using the percentages described above, which resulted in an implied value of \$1.78 per share for our common stock.

Fesnak also provided its Discounted Cash Flows Analysis of The Orchard without the private company costs savings, synergies or utilization of NOLs at discount rates of 20% and 17%. The aggressive case scenario produced an enterprise value of \$29.89 million at a 20% discount rate and \$36.08 million at a 17% discount rate, from which Fesnak calculated implied values of \$0.76 and \$1.73 per share of our common stock at 20% and 17% discount rates, respectively. The neutral case scenario produced an enterprise value of \$23.72 million at a 20% discount rate and \$28.70 million at a 17% discount rate, from which Fesnak calculated implied values of \$0.00 and \$0.58 per share of our common stock at 20% and 17% discount rates, respectively. Fesnak then applied a weighted average analysis to these values using the percentages described above, which resulted in an implied value of \$0.76 per share for our common stock using a 20% discount rate and \$1.16 per share for our common stock using a 17% discount rate.

Preliminary Indication of Value

As it had done in its previous presentations, Fesnak applied a weighted average calculation to the aggregate indicated equity values that it calculated using these three valuation methods. As it had done in its presentation to the special committee on November 24, 2009, Fesnak applied three different weightings to its calculations.

First, Fesnak applied a 20% weight to the value calculated using the Comparable Public Company Analysis, and 40% weight to each of the values calculated using the Selected Relevant Transactions Analysis and the Discounted Cash Flows Analysis. This weighted average calculation resulted in an aggregate indicated equity value of The Orchard of \$36.27 million at the 20% discount rate, and \$37.28 million at the 17% discount rate. Fesnak then subtracted approximately \$24.99 million from these values, representing the contractual liquidation preference of our outstanding Series A convertible preferred stock, resulting in residual values of \$11.28 million and \$12.29 million available to the holders of our common stock at 20% and 17% discount rates, respectively. Fesnak then divided these residual values by 6,395,000, the approximate number of shares of our common stock outstanding at the time of the presentation, which resulted in a per share value of our common stock of \$1.76 at the 20% discount rate and \$1.92 at the 17% discount rate.

Second, Fesnak weighted the three methods equally, applying a 34% weight to the value calculated using the Comparable Public Company Analysis, and 33% weight to each of the values calculated using the Selected Relevant Transactions Analysis and the Discounted Cash Flows Analysis. This weighted average calculation resulted in an aggregate indicated equity value of The Orchard of \$38.24 million at the 20% discount rate, and \$39.07 million at the 17% discount rate. Fesnak then subtracted approximately \$24.99 million from these values, representing the contractual liquidation preference of our outstanding Series A convertible preferred stock, resulting in residual values of \$13.25 million and \$14.08 million available to the holders of our common stock at 20% and 17% discount rates, respectively. Fesnak then divided these residual values by 6,395,000, the approximate number of shares of our common stock outstanding at the time of the presentation, which resulted in a per share value of our common stock of \$2.07 at the 20% discount rate and \$2.20 at the 17% discount rate.

Third, Fesnak applied a 50% weight to the value calculated using the Comparable Public Company Analysis, and 25% weight to each of the values calculated using the Selected Relevant Transactions Analysis and the Discounted Cash

Flows Analysis. This weighted average calculation resulted in an aggregate indicated equity value of The Orchard of \$40.50 million at the 20% discount rate, and \$41.13 million at the 17% discount rate. Fesnak then subtracted approximately \$24.99 million from these values, representing the contractual liquidation preference of our outstanding Series A convertible preferred stock, resulting in residual values of \$15.50 million and \$16.13 million available to the holders of our common stock at 20% and 17% discount rates, respectively. Fesnak then divided these residual values by 6,395,000, the approximate number

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of shares of our common stock outstanding at the time of the presentation, which resulted in a per share value of our common stock of \$2.42 at the 20% discount rate and \$2.52 at the 17% discount rate.

Finally, to demonstrate the added value of the utilization of the NOLs, Fesnak applied a 100% weight to its Discounted Cash Flows Analysis and calculated values based on full utilization of The Orchard's NOLs and limited utilization of The Orchard's NOLs at \$700,000 per year. This analysis did not include any private company costs savings or synergies. These calculations resulted in an aggregate indicated equity value of The Orchard of \$39.41 million with unlimited use of NOLs and \$36.38 million with limited use of the NOLs. Fesnak then subtracted approximately \$24.99 million from these overall values, representing the contractual liquidation preference of our outstanding Series A convertible preferred stock, resulting in residual values of \$14.42 million and \$11.38 million available to the holders of our common stock. Fesnak then divided these residual values by 6,395,000, the approximate number of shares of our common stock outstanding at the time of the presentation, which resulted in a per share value of our common stock of \$2.25 with unlimited use of our NOLs and \$1.78 with limited use of our NOLs.

The special committee reviewed the valuation analysis with Fesnak.

January 12, 2010 Presentation

At a meeting of the special committee on January 12, 2010, Fesnak discussed its valuation analysis in light of recent negotiations with Dimensional Associates. Fesnak did not make a presentation or provide the special committee with any materials at this meeting.

The meeting was called by the special committee and was attended by Messrs. Donahue, Altschul, Straka and Peck of the special committee, Messrs. Schmitt and Smoot of Patterson Belknap and Mr. Fesnak of Fesnak.

Fesnak explained that it had received updated information from management regarding forecasted cash flows that it would consider and incorporate into its financial analysis. Fesnak stated that it believed that the most appropriate weighting among its three valuation techniques—Comparable Public Company Analysis, Selected Relevant Transactions Analysis and Discounted Cash Flows Analysis—would be to weight each equally. Fesnak then discussed with the special committee the magnitude of the synergies that Dimensional Associates could expect to realize upon the consummation of the transaction from both being a private company as well as combining The Orchard with its other assets. Fesnak estimated that Dimensional Associates could expect to realize up to \$910,000 after taxes annually.

Finally, the special committee asked Fesnak whether based on its current analysis it could identify a range of comfort within which it would be able to say that a price is fair to The Orchard's unaffiliated stockholders. Fesnak informed the special committee that its current valuation models suggested a fair price range for the unaffiliated shares was between \$2.00 and \$2.10 per share.

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

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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, Merger Sub and Certain of Their Affiliates 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. Therefore, Dimensional Associates, Merger Sub and the Dimensional

Affiliates are required to express their beliefs as to the fairness of the merger to our unaffiliated stockholders, as defined in Rule 13e-3 under the Exchange Act. Dimensional Associates, Merger Sub 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. Dimensional Associates, Merger Sub and the Dimensional Affiliates have collectively engaged in the analysis and adopted the conclusions set forth below. Dimensional Associates, Merger Sub and the Dimensional Affiliates 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, none of Dimensional Associates, Merger Sub or the Dimensional Affiliates 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, Merger Sub and the Dimensional Affiliates 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. Merger Sub, Dimensional Associates and the Dimensional Affiliates 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 defined minimum amount in cash, thus eliminating any uncertainty in valuing the minimum merger consideration to be received;

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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 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, Merger Sub and the Dimensional Affiliates 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, Merger Sub and the Dimensional Affiliates did not consider net book value, which is an accounting concept, as a factor because they believe that net book value is not a

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material indicator of the value of The Orchard as a going concern but rather is indicative of historical costs. In addition, Dimensional Associates, Merger Sub and the Dimensional Affiliates 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, Merger Sub and the Dimensional Affiliates 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, Merger Sub and the Dimensional Affiliates 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, Merger Sub and the Dimensional Affiliates. Merger Sub, Dimensional Associates and the Dimensional Affiliates 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, Merger Sub and the Dimensional Affiliates 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 Stock 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.

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. In the event Dimensional Associates obligation to pay the additional consideration is triggered, Dimensional Associates will fund the additional consideration 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

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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.

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 .

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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).

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

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	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 Flows 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 .

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

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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

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	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)

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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	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				