

Orchard Enterprises, Inc.  
Form DEF 14A  
April 29, 2008

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

**SCHEDULE 14A INFORMATION**

**PROXY STATEMENT PURSUANT TO SECTION 14(a) OF THE SECURITIES  
EXCHANGE ACT OF 1934. (Amendment No. )**

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

- Preliminary Proxy Statement
- Confidential, for Use of the Commission Only (As permitted by Rule 14a-6(e)(2))
- Definitive Proxy Statement
- Definitive Additional Materials
- Soliciting Material Pursuant to §240.14a-12

**THE ORCHARD ENTERPRISES, INC.**  
(Name of Registrant as Specified in Its Charter)

(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:
  - 2) Aggregate number of securities to which transaction applies:
  - 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):
  - 4) Proposed maximum aggregate value of transaction:
  - 5) Total fee paid:
- Fee paid previously with preliminary materials.

- o Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identifying 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:

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**THE ORCHARD ENTERPRISES, INC.  
100 Park Avenue, 2<sup>nd</sup> Floor  
New York, New York 10017**

**NOTICE OF ANNUAL MEETING OF STOCKHOLDERS  
To Be Held June 4, 2008**

To Our Stockholders:

On June 4, 2008, The Orchard Enterprises, Inc. will hold its 2008 Annual Meeting of Stockholders at the offices of Reed Smith LLP, 599 Lexington Avenue, 22<sup>nd</sup> Floor, New York, New York 10022. The meeting will begin at 10:00 a.m., Eastern Daylight Time, for the following purposes:

1. To elect the Board of Directors.
2. To ratify the appointment of our independent registered public accountants for fiscal year 2008.
3. To approve the adoption of The Orchard Enterprises, Inc. 2008 Stock Plan, which further amends our Amended and Restated 2005 Stock Plan.
4. 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 April 24, 2008 will be entitled to notice of, and to vote at, this meeting or any adjournments that may take place. For a period of at least ten days prior to 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 100 Park Avenue, 2<sup>nd</sup> Floor, New York, New York 10017.

Your vote is important. Whether or not you expect to attend the meeting in person, you are urged to sign, date, and return the enclosed proxy card at your earliest convenience to ensure the presence of a quorum at the Annual Meeting. If you send in your proxy and then decide to attend the Annual Meeting to vote your shares in person, you may still do so. Your proxy is revocable in accordance with the procedures set forth in the Proxy Statement.

Your Board of Directors recommends that you vote in favor of the three 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,  
Stanley H. Schneider  
*Secretary*  
New York, New York  
April 29, 2008

**PROXY STATEMENT**

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**PROXY STATEMENT FOR ANNUAL MEETING OF STOCKHOLDERS**

The accompanying proxy is solicited by the Board of Directors (the Board) of The Orchard Enterprises, Inc., a Delaware corporation (The Orchard or the Company), for use at the Company's annual meeting of stockholders (the Annual Meeting) to be held on June 4, 2008 at 10:00 a.m., Eastern Daylight Time, and at any adjournment or postponement thereof, for the purposes set forth in this Proxy Statement and in the accompanying Notice of Annual Meeting of Stockholders. The Annual Meeting will be held at the offices of Reed Smith LLP, 599 Lexington Avenue, 22<sup>nd</sup> Floor, New York, New York 10022.

The Company's complete mailing address is 100 Park Avenue, 2<sup>nd</sup> Floor, New York, New York, 10017, and its telephone number is 212-201-9280.

These proxy solicitation materials are first being mailed on or about May 5, 2008 to all stockholders entitled to vote at the Annual Meeting.

**GENERAL INFORMATION**

*Certain Financial Information.* Please note that our consolidated financial statements and related information are included with our 2007 Annual Report on Form 10-K filed with the Securities and Exchange Commission (the SEC) on March 31, 2008, a copy of which is enclosed with this Proxy Statement.

*Attendance at Annual Meeting.* Admission to the meeting is limited to stockholders and will be on a first-come, first-served basis. Registration will begin at 9:00 a.m. and each stockholder may be asked to present valid picture identification such as a driver's license or passport. Cameras, recording devices and other electronic devices will not be permitted at the meeting.

*Voting Securities.* Only stockholders of record as of the close of business on April 24, 2008 (the Record Date) will be entitled to vote at the meeting and any adjournment thereof. As of the Record Date, there were 6,271,786 shares of our common stock and 448,833 shares of our Series A Convertible Preferred Stock issued and outstanding, of which 2,709,276 shares of our common stock and 446,918 shares of our Series A Convertible Preferred Stock were held by Dimensional Associates. Stockholders may vote in person or by proxy. Each holder of shares of common stock is entitled to one (1) vote per share and each holder of shares of our Series A Convertible Preferred Stock is entitled to three and one third (31/3) votes per share on each proposal presented in this Proxy Statement. There is no cumulative voting in the election of directors.

*Solicitation of Proxies.* The cost of soliciting proxies will be borne by us. In addition to soliciting stockholders by mail, we will request that banks and brokers and other persons representing beneficial owners of the shares forward the proxy solicitation material to such beneficial owners, and we may reimburse these parties for their reasonable out-of-pocket costs. We may use the services of our officers, directors and regular employees, without additional compensation, to solicit proxies personally or by telephone, facsimile or email.

*Voting of Proxies.* All shares represented by a valid proxy received prior to the meeting will be voted. Where a stockholder specifies by means of the proxy a choice with respect to any matter to be acted upon, the shares will be voted in accordance with the specification so made. If no choice is indicated on the proxy, the shares will be voted FOR all nominees, FOR all other proposals described herein and as the proxy holders may determine in their discretion with respect to any other matters that properly come before the meeting. See TRANSACTION OF OTHER BUSINESS. A stockholder giving a proxy has the power to revoke his or her proxy, at any time prior to the time it is voted, by delivering to our Secretary a written instrument revoking the proxy or a validly executed proxy with a later date, or by attending the meeting and voting in person.

*Quorum.* 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 common stock and Series A Convertible Preferred Stock issued and outstanding on the Record Date. Shares that are voted FOR, WITHHOLD, ABSTAIN or AGAINST a matter (the Votes Cast ) are treated as being present at the Annual Meeting for purposes of establishing a quorum. In the event that there are not sufficient votes for a quorum, or to approve or ratify any matter being presented at the time of the Annual Meeting, 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.

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*Abstentions.* Abstentions will be counted for purposes of determining both (i) the presence or absence of a quorum for the transaction of business and (ii) the total number of Votes Cast with respect to a proposal (other than the election of directors). Accordingly, abstentions will have the same effect as a vote AGAINST the proposal.

*Broker Non-Votes.* Broker non-votes will be counted for purposes of determining the presence or absence of a quorum for the transaction of business, but will not be counted for purposes of determining the number of Votes Cast with respect to the particular proposal on which the broker has expressly not voted. Accordingly, broker non-votes will not affect the outcome of the voting on a particular proposal.

**SUMMARY OF PROPOSALS**

The following three proposals will be considered at the Annual Meeting. Management of the Company anticipates that Dimensional Associates, the majority stockholder of the Company, will vote all of its shares in favor of each of the proposals set forth below. In such event, the approval of each such proposal would be assured.

**Proposal One Election of Directors**

The first proposal is to elect seven (7) directors to the Board. Nominees for directors are David Altschul, Viet Dinh, Michael Donahue, Nathan Peck, Greg Scholl, Danny Stein and Joel Straka. Each nominee, other than Nathan Peck and Joel Straka, currently serves as one of our directors.

Additional information about the election of directors and a brief biography of each nominee appears under the section PROPOSAL ONE: ELECTION OF DIRECTORS.

**The Board unanimously recommends that you vote FOR each nominee.**

**Proposal Two Ratification of Appointment of Independent Registered Public Accounting Firm**

The second proposal is to ratify the appointment of Marcum & Kliegman LLP as our independent registered public accounting firm for 2008.

Additional information about the ratification of the appointment of Marcum & Kliegman LLP as our independent registered public accounting firm appears under the section PROPOSAL TWO: RATIFICATION OF APPOINTMENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM.

**The Board unanimously recommends that you vote FOR the ratification of the appointment of the Company's independent registered public accounting firm for 2008.**

**Proposal Three Approval of the adoption of The Orchard Enterprises, Inc. 2008 Stock Plan**

The third proposal is to approve the adoption of The Orchard Enterprises, Inc. 2008 Stock Plan, which further amends and restates our Amended and Restated 2005 Stock Plan.

Additional information about the approval of the adoption of The Orchard Enterprises, Inc. 2008 Stock Plan appears under the section PROPOSAL THREE: APPROVAL OF THE ADOPTION OF THE ORCHARD ENTERPRISES, INC. 2008 STOCK PLAN.

**The Board unanimously recommends that you vote FOR the approval of the adoption of The Orchard Enterprises, Inc. 2008 Stock Plan.**



*Other Matters.* At the date of this Proxy Statement, the only business the Board intends to present or knows that others will present at the Annual Meeting is that set forth above. If any other matter or matters are properly brought before the Annual Meeting, or any adjournment thereof, it is the intention of the persons named in the accompanying form of proxy to vote the proxy on such matters in accordance with their judgment.

**PROPOSAL ONE: ELECTION OF DIRECTORS**

Our Board currently consists of seven (7) members. The term of all of our directors will expire at the Annual Meeting. All of our current directors, other than Terry Hatchett and Clayton Trier, will be standing for re-election.

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

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

**Nominees**

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

<b>Name</b>	<b>Age</b>	<b>Position(s)</b>	<b>Director Since</b>
David Altschul	61	Director	2006
Viet Dinh	40	Director	2007
Michael Donahue	49	Director	2007
Nathan Peck	54	Director nominee	
Greg Scholl	38	Director; President and Chief Executive Officer	2007
Danny Stein	38	Director	2007
Joel Straka	40	Director nominee	

*David Altschul* has served as a member of our Board since February 2006. Since January 2004, Mr. Altschul has been a partner in Altschul & Olin, LLP, a law firm, where his practice is primarily focused upon representing individuals and companies in the worldwide music industry. From January 2003 to December 2003, Mr. Altschul practiced law as a sole practitioner. From March 2002 to July 2002, Mr. Altschul served as an independent consultant to the Record Industry Association of America. From November 1980 to December 2001, Mr. Altschul was employed in various positions for Warner Bros. Records, including serving as General Counsel from 1986 to 1995 and as both Vice Chairman and General Counsel from 1995 to 2001. Mr. Altschul has a BA degree from Amherst College and a JD degree from Yale Law School.

*Viet Dinh* has served as a member of our Board since November 2007. Mr. Dinh has been a Professor of Law at Georgetown University Law School since 1996, and currently is the Co-Director of its Asian Law & Policy Studies Program. He served as Assistant Attorney General of the United States from May 2001 to May 2003. Since June, 2003, he has been the principal at Bancroft Associates PLLC, a law and public policy consulting firm specializing in national security, regulatory compliance, and law enforcement. Mr. Dinh currently serves on the board of directors of News Corporation (NYSE: NWS) and M&F Worldwide (NYSE: MFW). Mr. Dinh has an A.B. degree in government and economics from Harvard University and a J.D. degree from Harvard Law School.

*Michael Donahue* has served as a member of our Board since November 2007. Mr. Donahue currently serves as an independent advisor to firms in the information and technology industries. He served as executive chairman of Expensewatch.com from 2006 to March 2007. In 2005, Mr. Donahue completed a twenty-year career with KPMG LLP, KPMG Consulting and BearingPoint. During his tenure with KPMG and its successors, he most recently served as Group Executive Vice President and Chief Operating Officer (2001 to 2005) and Managing Partner, Technology Solutions (1997 to 2001). He also served on the board of directors of KPMG LLP from 1998 to 2001. Mr. Donahue

currently serves on the boards of directors of Air Products and Chemicals, Inc. (NYSE: APD), Arbinet, Inc. (NASDAQ: ARBX) and GSI Commerce, Inc. (NASDAQ: GSIC). Mr. Donahue has degrees in economics and history from the University of Pennsylvania.

*Nathan Peck* is being nominated for first time election to our Board. Mr. Peck has been a Senior Lecturer at The Johnson Graduate School of Management, Cornell University since 2005. From 1999 to 2005, Mr. Peck served as Executive Vice President and Chief Administrative Officer of KPMG Consulting (now BearingPoint), during which time he was part of the Company's Corporate Leadership Team, Executive Committee and Investment Committee.

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Before being promoted to the Corporate Leadership Team in 1999, Mr. Peck served as the Financial Services Consulting Co-Practice Leader and Bank Consulting Practice Leader for KPMG Consulting from 1997 to 1999 and 1995 to 1997, respectively. From 1992 to 1995, Mr. Peck was Senior Vice President and Managing Director for Bankers Trust Company. Mr. Peck is an alumnus of McKinsey & Co., has a CPA and earned a MBA and a BA from Cornell University.

*Greg Scholl* has been the President and Chief Executive Officer of the Company and has served as a member of our Board since November 2007. Mr. Scholl served as a managing director of Dimensional Associates, the controlling stockholder of the Company in 2003 and during that time he became President and Chief Executive Officer of our wholly-owned subsidiary, Orchard Enterprises NY, Inc. ( Orchard NY ), positions that he held until Orchard NY was acquired by the Company in November 2007. Mr. Scholl was an associate principal at the management consulting firm of McKinsey & Company from 2002 to 2003 in the media and entertainment practice. From 1999 to 2002, Mr. Scholl served as managing member of Carlin Ventures LLC, the private equity fund of Edwin Cohen. From 1993 to 1999, Mr. Scholl served in the technology and the media and entertainment practices of the management consulting firm of Booz Allen & Hamilton, and was a principal at the firm. Mr. Scholl has a Bachelor of Arts degree in History and Science from Harvard College.

*Danny Stein* has served as a member of our Board since November 2007. Mr. Stein serves as President of JDS Capital Management, Inc., an investment firm based in New York that invests in private and public debt and equity, and he has held this position since 2003. Mr. Stein also serves as chief executive officer of Dimensional Associates, the majority stockholder of the Company, and he was a director of Orchard NY from April 2003 until its acquisition by the Company in November 2007. From May 2001 through October 2002, Mr. Stein was the chief executive officer of TTR Technologies, a company that specialized in copy-protection technologies whose assets were sold to Macrovision (MVSN). From 2000 to 2001, Mr. Stein was President of Javu Technologies, which licenses software and services to corporations that store, manage, deliver or repurpose video assets. From 1999 to May 2000, Mr. Stein was president, chief operating officer and a director of the Wedding List Company, an Internet company with retail outlets specializing in the wedding gift and registry business. Mr. Stein has a Bachelor of Science degree from Cornell University.

*Joel Straka* is being nominated for first time election to our Board. From 2002 to April 2008, Mr. Straka served as an investment banker at Goldman, Sachs & Co. covering consumer products and retail companies. From 1994 to 2000, Mr. Straka served as a corporate attorney with Cravath, Swaine & Moore. Mr. Straka received an MBA from Columbia Business School in 2002, a JD from the University of Virginia School of Law in 1994 and a BA from Harvard College in 1990.

## **Director Independence**

Our Board consists of seven (7) directors. The Company's nominees for election at the Annual Meeting are David Altschul, Viet Dinh, Michael Donahue, Greg Scholl and Danny Stein, all of whom are currently members of the Board, and Nathan Peck and Joel Straka, who are first time nominees. Our Board has determined that each of the directors, other than Greg Scholl, our President, Chief Executive Officer and Treasurer, and Danny Stein, who is affiliated with our majority stockholder, Dimensional Associates, are independent directors as defined by the applicable listing standards of the Nasdaq Global Market.

During at least some portion of the year ended December 31, 2007, Terry Hatchett and Clayton Trier, currently members of the Board, and Roger Biscay, Peter Csathy, John Kilcullen, Mitchell Koulouris and Tuhin Roy also served as members of the Board. The Board previously had determined that each of such persons other than Mitchell Koulouris, our former President and Chief Executive Officer, and Tuhin Roy, our former Chief Strategy Officer and President of our wholly-owned subsidiary, Digital Rights Agency, Inc. ( DRA ), were independent directors as defined

by the applicable listing standards of the Nasdaq Global Market. In the course of our Board's determination regarding the independence of Mr. Kilcullen, it considered advertising purchased by our Company from *Billboard Magazine* in 2006. Mr. Kilcullen is the publisher of Billboard Information Group, which includes *Billboard Magazine*. The Audit Committee of the Board, relying on representations from management and Mr. Kilcullen, determined that such advertising was purchased at the magazine's customary rates and was not material to either entity's annual revenues during 2007.

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**Attendance at Board Meetings and Board Committees**

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

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

Our Board currently has three (3) standing committees: the Audit Committee, the Compensation Committee and the Executive, Nominating and Corporate Governance Committee. During a portion of 2007, the Board also had a standing Content Acquisition Committee. During 2007, our Board of Directors met twelve (12) times, the Audit Committee met eight (8) times, the Compensation Committee met six (6) times, the Nominating and Corporate Governance Committee (which subsequently was renamed the Executive, Nominating and Corporate Governance Committee) met one (1) time, and the Content Acquisition Committee (whose principal responsibilities are now within the Executive, Nominating and Corporate Governance Committee) met three (3) times. All of the incumbent directors attended at least 75% of the meetings of our Board of Directors and each committee on which he served. The directors are encouraged to attend the annual meeting of stockholders. All directors then on the Board attended the 2007 Annual Meeting of Stockholders.

*Audit Committee.* The Audit Committee currently consists of Messrs. Hatchett (Chairman), Donahue and Trier. The Audit Committee is responsible for reviewing and monitoring our corporate accounting and financial reporting processes, the periodic public release of financial results and the periodic filing of financial reports with the SEC, and selecting the independent registered public accounting firm to audit our consolidated financial statements, including approving their compensation and monitoring their qualifications, independence and performance. Our Board has determined that each member of the Audit Committee is independent under the applicable listing standards of the Nasdaq Global Market, and that each of Messrs. Hatchett and Trier qualifies as an audit committee financial expert under Item 407(d)(5) of Regulation S-K promulgated by the SEC. Messrs. Hatchett and Trier each qualify as an audit committee financial expert by virtue of having previously been partners in the audit division of large international public accounting firms. Neither Mr. Hatchett nor Mr. Trier is standing for re-election to the Board of Directors. In the event that Nathan Peck is elected to the Board of Directors, it is anticipated that Mr. Peck would be designated as the audit committee financial expert. The Audit Committee has a written charter, which is available on our website at <http://investor.theorchard.com> by clicking on the link **Highlights** under the heading **Corporate Governance**. The Report of the Audit Committee of the Board of Directors is included in this Proxy Statement.

*Compensation Committee.* The Compensation Committee currently consists of Messrs. Dinh (Chairman) and Hatchett. Both members are independent directors under the applicable listing standards of the Nasdaq Global Market. The Compensation Committee is responsible for determining salaries, incentives and other forms of compensation for our Company's executive officers and compensation for non-employee directors, as well as administering the Company's Amended and Restated 2005 Stock Plan and other incentive compensation and employee benefit plans of the Company. The Compensation Committee has a written charter, which is available on

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our website at <http://investor.theorchard.com> by clicking on the link [Highlights](#) under the heading [Corporate Governance](#).

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

### **Consideration of Director Nominees**

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

*Stockholder Nominees.* The Executive, Nominating and Corporate Governance Committee considers properly submitted stockholder nominations for candidates for membership on the Board as described below under [Identifying and Evaluating Nominees for Directors](#). Any stockholder nominations proposed for consideration by the Nominating and Corporate Governance Committee should include the nominee's name and qualifications for Board membership. In addition, they should be submitted within the time frame and in the manner as specified under [STOCKHOLDER PROPOSALS TO BE PRESENTED AT NEXT ANNUAL MEETING](#).

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

*Identifying and Evaluating Nominees for Directors.* Typically, any new candidates for nomination to the Board are suggested by existing directors or our executive officers, although candidates may also come to our attention through stockholders, professional search firms or other persons. The Executive, Nominating and Corporate Governance Committee of the Board will carefully review the qualifications of any candidates who have been properly brought to its attention. Such a review may, in the Committee's discretion, include a review solely of information provided to the Committee or it may also include discussion with persons familiar with the candidate, an interview with the candidate or other actions that the Committee deems proper. In the case of new director candidates, the questions of independence and financial expertise are important to determine what roles can be performed by the candidate, and the



Executive, Nominating and Corporate Governance Committee determines whether the candidate will meet the independence standards set forth in the SEC rules and regulations and the applicable Nasdaq listing standards, and the level of the candidate's financial expertise. In the case of incumbent directors whose terms of service are set to expire, the Executive, Nominating and Corporate Governance Committee reviews such directors' overall service to our Company during their terms, including attendance at meetings, level

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of participation, quality of performance, and whether the director continues to meet the independence standards set forth in the applicable SEC rules and regulations and the applicable Nasdaq listing standards. The Committee shall consider the suitability of each candidate, including the current members of the Board, in light of the current size and composition of the Board. In evaluating the qualifications of the candidates, the Committee considers many factors, including character, integrity, reputation, business judgment, independence, relevant business and industry expertise, diversity of experience, geographic location of the candidate, length of service and other criteria. The Committee evaluates such factors, among others, and does not assign any particular weighting or priority to any of these factors. Candidates properly recommended by stockholders are evaluated by the Executive, Nominating and Corporate Governance Committee using the same criteria as other candidates. Candidates are first screened by the Executive, Nominating and Corporate Governance Committee, and if approved by the Executive, Nominating and Corporate Governance Committee, they are then screened by other members of the Board. The full Board approves the final nomination(s) based on recommendations from the Executive, Nominating and Corporate Governance Committee. The Chairman of the Board, acting on behalf of the full Board, will extend the formal invitation to become a nominee of the Board. Qualified candidates for membership on the Board will be considered without regard to race, color, religion, sex, national origin, age, medical condition or disability, sexual orientation, veteran status or any other characteristic protected by law. The nominations for initial election to the Board at the 2008 Annual Meeting were recommended, in the case of Mr. Peck, by a non-management director and, in the case of Mr. Straka, by the Chief Executive Officer and a non-management director.

## **Code of Business Conduct**

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

## **Communications with the Board by Stockholders**

We maintain an informal process for stockholder communication with the Board. Stockholders wishing to communicate with our Board or with an individual Board member concerning our Company may do so by writing to the Board or to the particular Board member, and mailing the correspondence to: Attention: Board of Directors, c/o Secretary, The Orchard Enterprises, Inc., 100 Park Avenue, 2nd Floor, New York, New York 10017. The envelope should indicate that it contains a stockholder communication. Any such communication must state the number of shares beneficially owned by the stockholder making the communication. All such stockholder communications will be forwarded to the director or directors to whom the communications are addressed.

## **Director Compensation**

For the year ended December 31, 2007, each director who was not also an employee was entitled to receive a fee of \$36,000 per year, except that the chairperson of the Audit Committee was entitled to \$40,000 and the Chairman of the Board was entitled to \$50,000 per year. Each non-employee director also was entitled to receive \$500 per committee meeting attended. Our directors are reimbursed for reasonable out-of-pocket expenses incurred in attending meetings of the Board or the committees thereof, and for other expenses reasonably incurred in their capacity as directors. Any new non-employee director was entitled to receive an initial option to purchase 4,000 shares of our common stock (after giving effect to the one-for-three reverse stock split effective November 14, 2007) with an exercise price per share equal to the fair market value of our common stock on the date of grant, vesting in equal monthly installments over 12 months beginning on the date of grant. Messrs. Dinh and Donahue received such 4,000 share initial grants on

November 13, 2007, but Mr. Stein declined such a grant. On each date of our annual meeting of stockholders, each non-employee director who has served on the Board for at least the preceding six (6) months was entitled to an additional option to purchase 2,000 shares (post-split) with an exercise price per share equal to the fair market value of our common stock on the date of grant. These annual option grants vest in equal monthly installments over 12 months from the date of grant. In June 2007, our six non-employee

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directors at that time, including Messrs. Hatchett and Trier, each received such 2,000 share option grants. The timing and terms of these option grants to non-employee directors are set forth in the Company's Amended and Restated 2005 Stock Plan; they are automatic and non-discretionary with respect to the number and terms.

The following table summarizes compensation paid to those who served as non-employee directors during any portion of the year ended December 31, 2007.

Name	Non-Equity Nonqualified						Total Compensation
	Fees Earned or Paid in Cash (\$)	Stock Awards (\$)	Option Awards (\$)(1)(2)	Incentive Plan Compensation (\$)	Deferred Compensation Earnings (\$)	All Other Compensation (\$)	
David Altschul	\$ 37,000	\$	\$ 32,581	\$	\$	\$	\$ 69,581
Roger Biscay	36,500		32,581				69,081
Peter Csathy	39,550		32,581				72,131
Viet Dinh	6,000		1,455				7,455
Michael Donahue	5,000		1,455				6,455
Terry Hatchett	47,500		32,581				80,081
John Kilcullen	40,550		32,581				73,131
Danny Stein							
Clayton Trier	78,208		36,511				114,719

- (1) Represents the share-based compensation expense recognized for financial statement reporting purposes for the year ended December 31, 2007, in accordance with SFAS No. 123R. For information on the valuation assumptions we used to estimate the fair value of the stock option grants, refer to Note 3 and Note 12 to our consolidated financial statements in our Annual Report on Form 10-K for the year ended December 31, 2007, as filed with the SEC on March 31, 2008. This amount represents our accounting expense for the stock option grants and does not correspond to the actual value that may be recognized by each director.
- (2) The aggregate number of stock option grants outstanding at December 31, 2007 for each such director or former director was 12,000 (2,000 granted during 2007) for Mr. Trier; 10,000 (2,000 granted during 2007) for each of Messrs. Altschul, Kilcullen, Csathy, Biscay and Hatchett; and 4,000 (all granted during 2007) for each of Messrs. Donahue and Dinh. The aggregate grant date estimated fair value of options granted to our non-employee directors in 2007, computed in accordance with SFAS No. 123R, was \$85,972.

On April 29, 2008, the Compensation Committee recommended, and the Board adopted, a revised Non-Executive Directors' Compensation Program ( DCP ), to be effective June 4, 2008, provided that The Orchard Enterprises, Inc. 2008 Stock Plan is adopted by Company stockholders on such date. Under the DCP, each non-employee director will receive a fee of \$40,000 per year, payable quarterly, with an additional annual fee of \$3,000 payable to each committee chairman. Our directors will continue to be reimbursed for reasonable out-of-pocket expenses incurred in attending meetings of the Board and for other expenses reasonably incurred in their capacity as directors. In addition, under the DCP, non-employee directors will be entitled to receive an annual restricted stock award for a number of shares of common stock having a value of \$50,000 based on the closing price of our stock on the date of grant, with the initial grant on June 4, 2008 vesting 1/3 on the date of grant and 1/3 on each of the subsequent two annual meeting

dates (provided that such director continues to serve until the time of such future annual meetings). The Chairman of the Board, if he/she is not a full-time employee of the Company, will receive an additional annual restricted stock award with a grant-date value of \$20,000 determined on the same basis and vesting in the same manner. Under the DCP, non-executive directors will also receive an annual option grant to purchase a number of shares of common stock equal to \$50,000 divided by an amount equal to one-third (1/3) of the closing price of our stock on the date of grant. This division by one-third is intended to approximate the share-based compensation expense attributable to such options under the Trinomial Lattice Method, which we use for accounting purposes under SFAS No. 123R. These options will have an exercise price per share equal to the closing price of our common stock on the date of grant and a term of 10 years, with the initial grant on June 4, 2008 vesting 1/3 on the date of grant and 1/3 on each of the subsequent two future annual meetings dates (provided that such director continues to serve until the time of such annual meetings). All such restricted stock awards and options

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to purchase common stock would be pursuant to the terms of The Orchard Enterprises, Inc. 2008 Stock Plan, assuming adoption of such plan is approved at this Annual Meeting. Messrs. Hatchett and Trier, incumbent members of the Board who are not standing for re-election at the Annual Meeting, will not participate in the DCP. It is anticipated that Mr. Stein, who previously has not participated in the Company's non-executive director compensation program and who voluntarily declined the stock option for 4,000 shares that was automatically available to him when he first joined the Board on November 13, 2007, will participate in the DCP, effective June 4, 2008.

## **Vote Required**

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

## **Recommendation of the Board**

**THE BOARD UNANIMOUSLY RECOMMENDS THAT YOU VOTE FOR THE ELECTION OF MESSRS. ALTSCHUL, DINH, DONAHUE, PECK, SCHOLL, STEIN AND STRAKA.**

### **PROPOSAL TWO: RATIFICATION OF APPOINTMENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

The Audit Committee of the Board has selected Marcum & Kliegman LLP as our independent registered public accounting firm for the year ending December 31, 2008. Marcum & Kliegman LLP is an independent registered public accounting firm and has audited the Company's consolidated financial statements for the year ended December 31, 2007.

The Board is asking the stockholders to ratify the selection of Marcum & Kliegman LLP as our independent registered public accounting firm for 2008. Although not required by law, by rules of Nasdaq or by our Bylaws, the Board is submitting the selection of Marcum & Kliegman LLP to the stockholders for ratification as a matter of good corporate practice. Even if the selection is ratified, our Audit Committee in its discretion may select a different independent registered public accounting firm at any time during the year if it determines that such a change would be in the best interests of our Company and its stockholders.

Representatives of Marcum & Kliegman LLP are expected to be present at the Annual Meeting. They will have an opportunity to make a statement if they desire to do so and will be available to respond to appropriate questions from the Company's stockholders.

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

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

## **Dismissal of Prior Auditors**

As previously reported, during November 2007, the Audit Committee requested proposals from auditing firms for the Company's 2007 audit. This decision was made following the completion of our acquisition of Orchard NY on

November 13, 2007, and the subsequent relocation of the Company's corporate headquarters and all operations of the combined company from Sacramento, California to New York, New York. After review and consideration of various proposals, effective December 19, 2007, the Audit Committee approved the engagement of Marcum & Kliegman LLP as the independent registered public accountants (the auditors) of the Company for the fiscal year ending December 31, 2007, and dismissed the firm of Perry-Smith, LLP (Perry-Smith) as auditors.

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Perry-Smith's reports on the Company's consolidated financial statements for the fiscal years ended December 31, 2006 and 2005 did not contain an adverse opinion or a disclaimer of opinion and were not qualified or modified as to uncertainty, audit scope, or accounting principles. In connection with the audits of the Company's consolidated financial statements for each of the two fiscal years ended December 31, 2006 and 2005 and through December 19, 2007, there were no disagreements with Perry-Smith on any matters of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which, if not resolved to the satisfaction of Perry-Smith, would have caused Perry-Smith to make reference to the matter in their report. During the two fiscal years ended December 31, 2006 and 2005 and through December 19, 2007, there were no reportable events (as defined in Regulation S-K, Item 304(a)(1)(v)). The Company requested Perry-Smith to furnish the Company with a letter addressed to the SEC stating whether it agreed with the above statements. A copy of Perry-Smith's letter, dated December 19, 2007, was filed as Exhibit 16.1 to the Company's Current Report on Form 8-K filed with the SEC on December 19, 2007.

**Fee Information**

The following table presents fees for audit, audit-related, tax and other services rendered by Marcum & Kliegman LLP, our independent registered public accounting firm, and by our prior auditors, Perry-Smith, LLP, for the years ended December 31, 2006 and 2007:

Service Category	Marcum & Kliegman LLP		Perry-Smith, LLP	
	2006	2007(a)	2006	2007
Audit Fees	\$	\$ 497,000	\$ 162,165	\$ 94,639
Audit-Related Fees				28,415
Tax Fees			24,650	44,280
All Other Fees				
Total	\$	\$ 497,000	\$ 186,815	\$ 167,334

(a) Such amounts were paid in 2008.

In the above table, in accordance with the SEC's definitions and rules, "Audit Fees" are fees for professional services for the audit of a company's financial statements included in the annual report on Form 10-K, for the review of a company's interim financial statements included in the quarterly reports on Form 10-Q, and for services that are normally provided by the accountant in connection with statutory and regulatory filings or engagements;

"Audit-Related Fees" are fees for assurance and related services that are reasonably related to the performance of the audit or review of a company's financial statements; and "Tax Fees" are fees for tax compliance, tax advice and tax planning.

**Vote Required**

The affirmative vote of a majority of the Votes Cast is required for approval of this proposal.

**Recommendation of the Board**



**THE BOARD UNANIMOUSLY RECOMMENDS A VOTE FOR THE RATIFICATION OF THE APPOINTMENT OF OUR COMPANY'S INDEPENDENT REGISTERED PUBLIC ACCOUNTANTS FOR THE YEAR ENDING DECEMBER 31, 2008.**

**REPORT OF THE AUDIT COMMITTEE OF THE BOARD OF DIRECTORS**

The Audit Committee is primarily responsible for assisting the Board of Directors in fulfilling its oversight responsibility by reviewing the financial information that will be provided to stockholders and others, appointing and reviewing the work performed by the independent registered public accounting firm, evaluating the Company's accounting policies and its system of internal controls that management has established, and reviewing with management significant financial transactions including any related-party transactions, the reasonableness of significant judgments made by management and the clarity of disclosures made in the financial statements. Management is responsible for the Company's financial reporting process, including the preparation of its

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consolidated financial statements in conformity with accounting principles generally accepted in the United States of America, and its system of internal controls. The Company's independent registered public accounting firm is responsible for auditing those consolidated financial statements in accordance with auditing standards generally accepted in the United States and expressing its opinion as to whether the consolidated financial statements present fairly, in all material respects, the financial position, results of operations and cash flows of the Company in conformity with accounting principles generally accepted in the United States of America. The Audit Committee does not prepare financial statements or perform audits, and its members are not auditors or certifiers of the Company's financial statements.

The Audit Committee reviewed and discussed the audited consolidated financial statements included in the Company's 2007 Annual Report on Form 10-K with management, including a discussion of the quality, not just the acceptability, of the accounting principles used by the Company, the reasonableness of significant management judgments and estimates made in the accounting process, and the clarity and completeness of disclosures in the consolidated financial statements. The Audit Committee also met with the Company's Chief Executive Officer and Chief Financial Officer to discuss their review of the Company's disclosure controls and procedures and internal accounting and financial controls in connection with the preparation and filing of the 2007 Annual Report on Form 10-K.

The Audit Committee discussed with Marcum & Kliegman LLP, the Company's independent registered public accounting firm, the overall scope of work for its 2007 audit. The Audit Committee reviewed and discussed the audited financial statements for the year ended December 31, 2007 with Marcum & Kliegman LLP, and met with representatives of the firm, with and without management present, to discuss the results of its audit work, its evaluations of the Company's internal controls, and its assessment of the overall quality of the Company's financial reporting. The Audit Committee has also discussed with Marcum & Kliegman LLP the matters required to be discussed by the Statements on Auditing Standards No. 61, as amended (AICPA, Professional Standards, Vol. 1 AU Section 380), as adopted by the Public Company Accounting Oversight Board in Rule 3200T.

The Audit Committee has also received and reviewed the written disclosures and the letter from Marcum & Kliegman LLP as required by Independence Standards Board Standard No. 1, *Independence Discussions with Audit Committees*, as adopted by the Public Company Accounting Oversight Board in Rule 3600T, and has discussed with the auditors the auditors' independence.

Based on the reviews and discussions referred to above, the Audit Committee recommended to the Board of Directors that the consolidated financial statements referred to above be included in the Company's Annual Report on Form 10-K for the year ended December 31, 2007. The Audit Committee also selected Marcum & Kliegman LLP to audit the Company's consolidated financial statements for the year ending December 31, 2008.

The Audit Committee has relied, without independent verification, on management's representations that the consolidated financial statements for 2007 are complete, free of material misstatement and prepared in accordance with accounting principles generally accepted in the United States, and on the opinion and representations made by Marcum & Kliegman LLP in its report on the Company's consolidated financial statements, including its representations that Marcum & Kliegman LLP is independent and the audit was performed in accordance with auditing standards generally accepted in the United States. The Audit Committee's oversight does not provide assurance that management's and Marcum & Kliegman LLP's opinion and representations referred to above are correct.

Respectfully,

THE AUDIT COMMITTEE OF  
THE BOARD OF DIRECTORS

Terry Hatchett (Chairman)  
Michael Donahue  
Clayton Trier

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**PROPOSAL THREE: APPROVAL OF THE ADOPTION OF  
THE ORCHARD ENTERPRISES, INC. 2008 STOCK PLAN**

Our Compensation Committee and the full Board of Directors believe that in order to successfully attract and retain the best possible candidates, we must continue to offer a competitive equity incentive program. As of April 24, 2008, only 160,709 shares of our common stock remained available for future grant of stock-based awards under our Amended and Restated 2005 Stock Plan, or the Plan, a number that our Compensation Committee and the full Board believe to be insufficient to meet our anticipated needs. Further, our Compensation Committee and the full Board of Directors believe that the Plan's individual limit on number of shares of common stock that may be granted to an eligible person in any calendar year is insufficient. Therefore, our Compensation Committee recommended, and the full Board of Directors approved, subject to stockholder approval, adoption of The Orchard Enterprises, Inc. 2008 Stock Plan (the 2008 Stock Plan). The 2008 Stock Plan further amends and restates the Amended and Restated 2005 Stock Plan to make the following principal modifications:

reflect the change in our name to The Orchard Enterprises, Inc. and the one-for-three reverse stock split that took effect November 14, 2007;

increase the number of shares of common stock as to which awards may be granted by 333,334 to 1,000,000, after giving effect to automatic annual increases that occurred in 2007 and 2008;

adjust upward the automatic annual increases, commencing in 2009, in the number of shares of common stock as to which awards may be granted by 116,667 to 250,000;

increase the individual limit on the number of shares of common stock as to which awards may be granted in any calendar year by 133,334 to 200,000; and

delete the automatic, non-discretionary grant of stock options to non-employee directors (on a post-split basis), which now will be determined pursuant to the DCP referred to above.

*All share amounts in this discussion of Proposal Three reflect the one-for-three stock split that took effect November 14, 2007.*

**Summary of the Plan**

*A summary of the principal features of the 2008 Stock Plan is provided below, but is qualified in its entirety by reference to the full text of the 2008 Stock Plan, included as Appendix A to this Proxy Statement.*

*General.* Our Plan, as currently in effect, was approved by our Board and adopted by our stockholders in 2005. The Board has approved the 2008 Stock Plan, subject to approval of such amendments by our stockholders. Our 2008 Stock Plan provides for the grant to our employees of incentive stock options, within the meaning of Section 422 of the Internal Revenue Code, and for the grant to our employees, directors and consultants of nonstatutory stock options, stock appreciation rights and restricted stock. The purpose of the 2008 Stock Plan is to recognize and reward participants, primarily our senior management, for their efforts on our behalf, to attract and motivate management and employees by appropriate incentives to contribute to the attainment of our long-term performance objectives, and to align management's and employees' interests with those of stockholders through compensation based on the performance of our common stock over a long-term period.

*Eligibility.* Non-statutory stock options, restricted stock and stock appreciation rights may be granted under the Plan to our employees, directors, and consultants. Incentive stock options may be granted only to employees. As of March 31, 2008, we had 77 employees, seven directors (including one employee director) and 13 consultants.

*Number of Shares of Common Stock.* Assuming stockholders approval of this proposal, a total of 1,000,000 shares of our common stock will be reserved for issuance pursuant to the 2008 Stock Plan subject to adjustment in future years as described below. Assuming approval of this proposal, we plan to register on Form S-8 under the Securities Act of 1933 the additional shares that may be issued under the 2008 Stock Plan. The number of shares in respect of any option or stock appreciation right that lapses or expires and any repurchased shares of restricted stock will be added back to the available number of shares of common stock for which awards may be granted. In addition, our 2008 Stock Plan provides for future annual increases in the number of shares

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available for issuance thereunder on the first day of each fiscal year, beginning with our fiscal year 2009, equal to the lesser of:

250,000 shares;

5% of the number of shares of our common stock outstanding on the first day of the fiscal year; or

such other lesser amount as our Board of Directors may determine.

*Administration of the Plan.* Our Compensation Committee will administer the 2008 Stock Plan. Our Compensation Committee has the power to determine the terms of the awards, including the number of shares subject to each such award, the exercisability of the awards and the form of consideration, if any, payable upon exercise.

*Stock Options.* Our Compensation Committee will determine the exercise price of stock options granted under the 2008 Stock Plan, which must at least be equal to the fair market value of our common stock on the date of grant. On April 28, 2008, the closing price of our common stock on the NASDAQ Global Market was \$5.02. The term of an incentive stock option may not exceed 10 years. Our Compensation Committee determines the term and vesting provisions of all stock options. After resignation or termination, an employee, director or consultant forfeits all unvested options and may exercise his or her vested options for a period of 90 days. However, an option may not be exercised later than the expiration of its term.

*Stock Appreciation Rights.* Stock appreciation rights may be granted under the 2008 Stock Plan. Stock appreciation rights allow the recipient to receive the appreciation in the fair market value of our common stock between the exercise date and the date of grant. Our Compensation Committee determines the terms of stock appreciation rights, including when such rights become exercisable and whether to pay the increased appreciation in cash or with shares of our common stock, or a combination thereof.

*Restricted Stock Awards.* Restricted stock awards granted under the 2008 Stock Plan are shares of our common stock that are earned (vest) in accordance with terms and conditions established by our Compensation Committee. Our Compensation Committee will determine the number of shares of restricted stock granted to any employee, director or consultant, the nature of the restrictions and the terms of vesting. While such restricted shares are outstanding but unvested, the certificates representing such shares are held in safe keeping by us, but the recipient receives any applicable dividends and other distributions and may vote such shares on all matters that come before the stockholders. Shares of restricted stock that do not vest are subject to our right of repurchase at the original purchase price or forfeiture.

*Individual Limit on Awards.* Assuming stockholders approval this proposal, no more than 200,000 shares of common stock may be granted under awards to any individual in a calendar year, taking into account all grants and awards under any other stock option and equity compensation plans that may be in place at the time.

*Restrictions on Transferability.* The 2008 Stock Plan does not allow for the transfer of awards and only the recipient of an award may exercise an award during his or her lifetime. Upon the death of a recipient, all grants or awards become fully vested.

*Adjustments upon Change in Control.* The 2008 Stock Plan provides that, in the event of a change in control of our company, all outstanding options and stock appreciation rights will accelerate and become exercisable, and all restrictions on restricted stock awards will lapse. Any options or stock appreciation rights not assumed in a change of control transaction will terminate immediately prior to such change of control.

*Amendment and Termination of the Plan.* The 2008 Stock Plan will automatically terminate on December 1, 2015, unless we terminate it sooner. In addition, our board of directors has the authority to suspend or terminate the 2008 Stock Plan provided such action does not impair the rights of any participant.

**U.S. Federal Income Tax Information**

*Incentive Stock Options.* An optionee who is granted an incentive stock option does not recognize taxable income at the time the option is granted or upon its exercise, although the exercise is an adjustment item for alternative minimum tax purposes and may subject the optionee to the alternative minimum tax. Upon a disposition of the shares more than two years after grant of the option and one year after exercise of the option, any gain or loss is treated as long-term capital gain or loss. If these holding periods are not satisfied, the optionee recognizes

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ordinary income at the time of disposition equal to the difference between the exercise price and the lower of (i) the fair market value of the shares at the date of the option exercise, or (ii) the sale price of the shares. Any gain or loss recognized on such a premature disposition of the shares in excess of the amount treated as ordinary income is treated as long-term or short-term capital gain or loss, depending on the holding period. Unless limited by Section 162(m) of the Code, we are generally entitled to a deduction in the same amount as the ordinary income recognized by the optionee.

*Nonstatutory Stock Options.* An optionee does not recognize any taxable income at the time he or she is granted a nonstatutory stock option. Upon exercise, the optionee recognizes taxable income generally measured by the excess of the then fair market value of the shares over the exercise price. Any taxable income recognized in connection with an option exercise by an employee is subject to tax withholding. Unless limited by Section 162(m) of the Code, we are generally entitled to a deduction in the same amount as the ordinary income recognized by the optionee. Upon a disposition of such shares by the optionee, any difference between the sale price and the optionee's exercise price, to the extent not recognized as taxable income as provided above, is treated as long-term or short-term capital gain or loss, depending on the holding period.

*Restricted Stock.* A participant generally will not have taxable income at the time an award of restricted stock is granted. Instead, he or she will recognize ordinary income in the first taxable year in which his or her interest in the shares underlying the award becomes either (i) freely transferable or (ii) no longer subject to substantial risk of forfeiture (*e.g.*, vested). However, a holder of a restricted stock award may elect to recognize income at the time he or she receives the award in an amount equal to the fair market value of the shares underlying the award less any amount paid for the shares on the date the award is granted.

*Stock Appreciation Rights.* No taxable income is reportable when a stock appreciation right is granted to a participant. Upon exercise, the participant will recognize ordinary income in an amount equal to the amount of cash received and the fair market value of any shares received. Any additional gain or loss recognized upon any later disposition of the shares would be capital gain or loss.

*Our Tax Impact from Awards.* We generally will be entitled to a tax deduction in connection with an award under the Plan in an amount equal to the ordinary income realized by a participant and at the time the participant recognizes such income (for example, the exercise of a nonstatutory stock option). Special rules limit the deductibility of compensation paid to our named executive officers. Under Section 162(m) of the Code, the annual compensation paid to named executive officers may not be deductible to the extent it exceeds \$1,000,000. However, we can preserve the deductibility of certain compensation in excess of \$1,000,000 if the conditions of Section 162(m) of the Code are met. These conditions include stockholder approval of the Plan and setting limits on the number of awards that any individual may receive per year. The Plan has been designed to permit the administrator to grant awards that qualify as performance-based for purposes of satisfying the conditions of Section 162(m) of the Code, which permits us to continue to receive a federal income tax deduction in connection with such awards.

THE FOREGOING IS ONLY A SUMMARY OF THE EFFECT OF U.S. FEDERAL INCOME TAXATION WITH RESPECT TO THE GRANT AND EXERCISE OF AWARDS UNDER THE PLAN. IT DOES NOT PURPORT TO BE COMPLETE, AND DOES NOT DISCUSS THE TAX CONSEQUENCES OF AN INDIVIDUAL'S DEATH OR THE PROVISIONS OF THE INCOME TAX LAWS OF ANY MUNICIPALITY, STATE OR FOREIGN COUNTRY IN WHICH ANY ELIGIBLE INDIVIDUAL MAY RESIDE.

## **Vote Required**

The affirmative vote of a majority of the Votes Cast is required for approval of this proposal.



**Recommendation of the Board**

**THE BOARD UNANIMOUSLY RECOMMENDS A VOTE FOR THE APPROVAL OF THE ADOPTION OF THE ORCHARD ENTERPRISES, INC. 2008 STOCK PLAN.**

**Table of Contents****STOCK OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT**

The following table sets forth certain information known to us with respect to the beneficial ownership of our common stock as of April 24, 2008 by (i) each person that we know is the beneficial owner of more than 5% of our common stock, (ii) each director and nominee for director, (iii) each of the named executive officers named in the Summary Compensation Table below, and (iv) all named executive officers and directors as a group. We have relied exclusively upon information provided to us by our directors and named executive officers and copies of documents sent to us that have been filed with the SEC by others for purposes of determining the number of shares each person beneficially owns. Beneficial ownership is determined in accordance with the rules and regulations of the SEC and generally includes those persons who have voting or investment power with respect to the securities. Except as otherwise indicated, and subject to applicable community property laws, the persons named in the table have sole voting and investment power with respect to all shares of our common stock beneficially owned by them. For each individual and group included in the table below, percentage ownership is calculated by dividing the number of shares beneficially owned by such person or group by the sum of (i) the 6,271,786 shares of common stock outstanding on April 24, 2008, (ii) the 1,346,499 shares of common stock into which the 448,833 shares of the Company's Series A Preferred Stock outstanding on April 24, 2008 were convertible, and (iii) the number of shares of common stock that such person or group had the right to acquire on or within 60 days after April 24, 2008. The address for each stockholder listed in the table below is c/o The Orchard Enterprises, Inc., 100 Park Avenue, 2<sup>nd</sup> Floor, New York, New York 10017, unless otherwise specified.

Name	Amount and Nature of Beneficial Ownership(1)	Percent of Common Stock Outstanding
Dimensional Associates, LLC(2)	4,197,513	54.0%
JDS Capital, L.P.(2)	4,197,513	54.0%
JDS Capital Management, LLC(2)	4,197,513	54.0%
Joseph D. Samberg(2)	4,197,513	54.0%
Danny Stein(3), (4)	4,197,533	54.0%
David Altschul(4), (5)	10,000	*
Viet Dinh(4), (6)	2,331	*
Michael Donahue(4), (6)	2,331	*
Terry Hatchett(5)	18,838	*
Nathan Peck(4)		*
Greg Scholl(7)	173,761	2.2%
Joel Straka(4)		*
Clayton Trier(8)	50,000	*
Barth Ballard	6,004	*
Karen Davis	8,333	*
Mitch Koulouris	146,593	1.9%
Brad Navin	28,333	*
Stanley H. Schneider	3,333	*
Scott Cohen	61,994	*
Richard Gottehrer	61,994	*

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Tuhin Roy	116,467	1.5%
Brian Perry		*
All current directors and executive officers as a group (12 persons)	4,602,835	58.9%

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

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- (1) To our knowledge, except as indicated in the footnotes to this table, the persons named in the table have sole voting and investment power with respect to all shares of common stock shown as beneficially owned by them, subject to community property laws where applicable.
- (2) Includes 2,709,276 shares of common stock and 446,918 of Series A Convertible Preferred Stock owned by Dimensional Associates, LLC. JDS Capital, L.P. holds a 90% membership interest in Dimensional. JDS Capital Management, LLC is the general partner of JDS Capital. Joseph D. Samberg has a 10% direct membership interest in, and is managing member of, Dimensional and is managing member of JDS Capital Management. The address of Dimensional is 1091 Boston Post Road, Rye, NY 10580, and the address of JDS Capital, JDS Capital Management and Joseph D. Samberg is 767 Third Avenue, New York, NY 10017.
- (3) Includes 2,709,276 shares of common stock and 446,918 of Series A Convertible Preferred Stock owned by Dimensional Associates, LLC, of which Mr. Stein is chief executive officer.
- (4) Does not include restricted stock award and stock option grants that may occur on June 4, 2008 under the Non-Executive Directors Compensation Program adopted on April 29, 2008. See Director Compensation appearing in this Proxy Statement.
- (5) Includes 10,000 shares of common stock subject to currently exercisable stock options and options exercisable within 60 days of April 24, 2008.
- (6) Includes 2,331 shares of common stock subject to currently exercisable stock options and options exercisable within 60 days of April 24, 2008.
- (7) Includes 11,110 shares of common stock issuable upon the exercise of currently exercisable stock options and options exercisable within 60 days of April 24, 2008.
- (8) Includes 12,000 shares of common stock issuable upon the exercise of currently exercisable stock options and options exercisable within 60 days of April 24, 2008.

**Acquisition of Orchard NY**

On November 13, 2007, we acquired Orchard NY through the merger of a newly formed subsidiary of ours with and into Orchard NY (the Merger). In connection with the Merger, we issued an aggregate of 2,862,910 shares of our common stock and 446,918 shares of our Series A Convertible Preferred Stock (which are convertible into an aggregate of 1,488,237 shares of our common stock) to the former stockholders of Orchard NY. In addition, we assumed Orchard NY's obligations under its outstanding deferred stock awards, obligating us to issue an aggregate of 157,683 shares of our common stock and 1,915 shares of our Series A Convertible Preferred Stock (which are convertible into an aggregate of 6,377 shares of our common stock).

Of the shares issued in connection with the merger, Dimensional Associates, of which Danny Stein is chief executive officer, received 2,709,276 shares of common stock and 446,918 shares of Series A Convertible Preferred Stock; 60,328 shares of common stock were issued to each of Scott Cohen and Richard Gotteherer; 23,203 shares of common stock were issued to Steve Haase; and the Company assumed Orchard NY's obligations with respect to a deferred stock award to Greg Sholl relating to 114,679 shares of common stock and 1,393 shares of Series A Convertible Preferred Stock.



**Table of Contents****COMPENSATION OF EXECUTIVE OFFICERS****Executive Officers**

The following sets forth certain information regarding our executive officers as of April 24, 2008.

<b>Name</b>	<b>Age</b>	<b>Position(s)</b>
Greg Scholl	38	President, Chief Executive Officer and Director
Nathan Fong	44	Executive Vice President and Chief Financial Officer
Brad Navin	37	Executive Vice President and General Manager
Dan Pifer	39	Executive Vice President, Operations and Technology
Stanley H. Schneider	60	Executive Vice President, General Counsel and Secretary
Steve Haase	33	Senior Vice President, Business Development

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

*Nathan Fong* joined The Orchard as Chief Financial Officer in February 2008 and was designated Executive Vice President and Chief Financial Officer in April 2008. From 2007 until he joined The Orchard in February 2008, Mr. Fong served as Chief Financial Officer for In-Demand Networks. From 2004-2007, he served as Chief Financial Officer, Rodale International, Rodale, Inc. From 2003-2004, Mr. Fong was Senior Vice President, Chief Financial Officer for Discovery Networks International, Discovery Communications, Inc. From 1997-2003, Mr. Fong served as Regional Vice President, Asia Pacific and later Divisional Vice President of Finance and Administration for Twentieth Century Fox International. Mr. Fong holds a BA in Accounting from Michigan State University, MBA from the University of Rochester and is a Certified Public Accountant.

*Brad Navin* has been Executive Vice President and General Manager of the Company since April 2008, and prior thereto was Vice President, Global Licensing & Sales of the Company since its acquisition of Orchard NY in November 2007. Mr. Navin oversees all content licensing, sales and marketing, and label management. Prior to November 2007, Mr. Navin was Vice President of Licensing & Operations for Orchard NY, which he joined in 2004. From 1999 to 2004, Mr. Navin was VP, Music & Programming at Digital Club Network, and the Executive Director of the New York Nightlife Association in 1999. Mr. Navin was an artist manager with Invasion Group management from 1997-1999. Prior to that, Mr. Navin worked for booking agency Artist & Audience Entertainment (1995-1997), where he was instrumental in helping to break new artists. Mr. Navin holds a B.A. from Loyola College in Maryland.

*Dan Pifer* has been Executive Vice President, Operations and Technology since April 2008, and prior thereto was Vice President of Sales Operations of the Company since its acquisition of Orchard NY in November 2007. Prior to that, Mr. Pifer was Vice President of Sales Operations of Orchard NY. He joined Orchard NY in October 2006 and, during that time, was engaged in managing virtually all operations and technology, including content management, encoding and delivery to retail outlets, and development of all technology. From October 2004 to October 2006 Mr. Pifer was VP of Sales Operations for eMusic overseeing content management, royalties and licensing. From May 2003 to October 2004 Mr. Pifer was VP of eMusiclive (formerly Digital Club Network) where he oversaw production and technology. From June 2001 to May 2003, Mr. Pifer led a technology consulting company called Tech 23 Inc. From March 2000 to June 2001, Mr. Pifer was Manager of Network Development for Digital Club Network, where he directed the building of their streaming audio/video network of 50 music venues. From 1989 to 2000, Mr. Pifer was a professional musician.

*Stanley H. Schneider* has served as Executive Vice President, General Counsel and Secretary of the Company since November 2007. Prior to that, he was Senior Vice President and General Counsel of Orchard NY and Senior Vice President and General Counsel of eMusic.com Inc., a related entity, from September 2004. Prior thereto Mr. Schneider served as Executive Vice President and General Counsel to Fabric Music Group from March 2003 to August 2004. From October 2001 to February 2003, Mr. Schneider served as Senior Vice President of Legal and Business Affairs for BMG Worldwide Corporate where he was chief legal officer for the BMG Music Group in North America. Prior to that, Mr. Schneider served as Vice President of Legal and Business Affairs for BMG Music Publishing where he was the chief legal officer from October 1989 to September 2001. Mr. Schneider has a JD from the New York University School of Law and a BA from Brooklyn College.

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*Steve Haase* has been Senior Vice President, Business Development of the Company since April 2008, and prior thereto was Vice President of Business Development of the Company since its acquisition of Orchard NY in November 2007. Mr. Haase is responsible for the Company's digital music and video service sales relationships worldwide. Prior to that, Mr. Haase was Vice President of Business Development of Orchard NY from November 1997. From 1997 until 2003, he served as General Manager of Orchard NY overseeing virtually all departments, including content management, distribution, artist and label relations, operations and technology. From June until November 1997, Mr. Haase served as Head of A&R at Sol 3 Records, where he worked with emerging artists distributed by BMG and Warner Bros.



**Table of Contents****Summary Compensation Table**

The following table summarizes the compensation of our named executive officers for the year ended December 31, 2007, determined on basis of rules recently adopted by the SEC relating to smaller reporting companies. Our named executive officers include our Chief Executive Officer, any other person who served as our principal executive officer at any time during 2007, our other two most highly compensated executive officers who were serving as such on December 31, 2007 and other individuals who would have been included as the most highly compensated executive officers if they had been an executive officer of the Company on December 31, 2007.

Name	Year	Salary (\$)	Bonus (\$)	Stock Awards (\$)(1)	Option Awards (\$)(2)	Non-Equity	Nonqualified	All Other Compen- sation (\$)(5)	Total Compen- sation (\$)
						Incentive Plan Compen- sation (\$)(3)	Deferred Compen- sation Earnings (\$)(4)		
Greg Scholl(6) <i>President and Chief Executive Officer</i>	2007	\$ 250,000	\$	\$ 27,555	\$ 7,896	\$ 250,000	\$ 663,789	\$ 250,000	\$ 1,449,240
	2006	250,000							250,000
John Ballard <i>Former Interim Chief Executive Officer</i>	2007	159,104			5,457				164,561
	2006	n/a	n/a	n/a	n/a	n/a	n/a	n/a	
Ben Davis <i>Former Interim Chief Executive Officer</i>	2007	143,598		65,950	42,389				251,937
	2006	101,111		80,750	29,219	30,420			241,500
Michael Koulouris <i>Former Chief Executive Officer</i>	2007	171,058						126,365	297,423
	2006	135,227				10,000			145,227
Michael Navin(7) <i>Executive Vice President and General Manager</i>	2007	157,500	40,000	4,822	531				202,853
	2006	141,668	25,000						166,668
Walter H. Schneider(8) <i>Executive Vice President, General Counsel and Secretary</i>	2007	233,635	15,000	1,033	239			12,031	261,943
	2006	105,097	7,500						112,597
Robert Cohen(9) <i>President, International</i>	2007	175,000	2,500	517	120			404,281	582,317
	2006	175,000							175,000
Richard Gottehrer(10) <i>Chief Creative Officer</i>	2007	150,000	2,500	517	120			404,281	557,317
	2006	150,000							150,000
William Roy(11) <i>Former Chief Strategy Officer and President of ORA</i>	2007	130,000							130,000
	2006	n/a	n/a	n/a	n/a	n/a	n/a	n/a	

n Perry(12)	2007	142,584			2,418				145,0
ner Vice	2006	n/a	n/a	n/a	n/a	n/a	n/a	n/a	
ident Controller									

- (1) Represents the share-based compensation expense recognized for financial statement reporting purposes for the year ended December 31, 2007 for the estimated fair value of restricted stock grants to named executive officers in 2007. The estimated fair value of the restricted stock was calculated in accordance with SFAS No. 123R, based on the closing price of our common stock on the date of grant. For additional information, refer to Note 3 and Note 12 to our consolidated financial statements in our Annual Report on Form 10-K for the year ended December 31, 2007, as filed with the SEC on March 31, 2008. This amount represents the Company's accounting expense for the restricted stock grants and does not correspond to the actual value that may be recognized by the named executive officer.
- (2) Represents the share-based compensation expense recognized for financial statement reporting purposes for the year ended December 31, 2007 for the estimated fair value of stock option grants to named executive officers in 2007, in accordance with SFAS No. 123R. For information on the valuation assumptions we used to estimate the fair value of the stock option grants, refer to Note 3 and Note 12 to our consolidated financial statements in our Annual Report on Form 10-K for the year ended December 31, 2007, as filed with the SEC on March 31, 2008. This amount represents the Company's accounting expense for the stock option grants and does not correspond to the actual value that may be recognized by the named executive officer.
- (3) Represents cash awards under the Management Incentive Bonus Plan.

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- (4) Represents amounts related to deferred compensation granted by Orchard NY, the obligations for which were assumed by the Company as a result of the Merger. Amounts recorded represent the fair value of the deferred compensation at time of the grant and is composed of \$435,704 in Common Stock and \$312,739 in Series A Convertible Preferred Stock.
- (5) Represents \$250,000 of additional compensation paid to Mr. Scholl for successful completion of the Merger. Amounts to Mr. Koulouris represent severance paid based on Mr. Koulouris' s Termination Agreement. Amounts paid to Mr. Schneider, represent health insurance premiums paid as outlined in Mr. Schneider' s Employment Agreement. Amounts reported for Messrs. Cohen and Gottehrer represent beneficial ownership values obtained based on an anti-dilution provision with respect to share transactions which occurred in Orchard NY prior to the Merger.
- (6) Of such amounts, \$32,192 in salary, \$27,555 in stock awards and \$7,896 in option awards relate to periods after the acquisition of Orchard NY by the Company on November 13, 2007, and all other amounts relate to Orchard NY.
- (7) Of such amounts, \$20,281 in salary, \$4,822 in stock awards and \$531 in option awards relate to periods after the acquisition of Orchard NY by the Company on November 13, 2007, and all other amounts relate to Orchard NY.
- (8) Of such amounts, \$30,085 in salary, \$1,033 in stock awards and \$239 in option awards relate to periods after the acquisition of Orchard NY by the Company on November 13, 2007, and all other amounts relate to Orchard NY.
- (9) Of such amounts, \$22,534 in salary, \$517 in stock awards and \$120 in option awards relate to periods after the acquisition of Orchard NY by the Company on November 13, 2007, and all other amounts relate to Orchard NY.
- (10) Of such amounts, \$19,315 in salary, \$517 in stock awards and \$120 in option awards relate to periods after the acquisition of Orchard NY by the Company on November 13, 2007, and all other amounts relate to Orchard NY.
- (11) Resigned from the Company and its DRA subsidiary effective November 13, 2007.
- (12) Ceased to be an officer of the Company effective November 13, 2007.

**Table of Contents****Outstanding Equity Awards at Fiscal Year-End**

The following table provides information on all outstanding equity awards held by our named executive officers at December 31, 2007.

Name	Option Awards				Stock Awards					
	Number of Securities Underlying Unexercised Options (#) Exercisable	Number of Securities Underlying Unexercised Options (#) Unexercisable	Number of Securities Underlying Exercised Options (#)	Equity Incentive Plan Awards: Market Value of Unearned Shares, Units or Rights That Have Not Vested (\$)	Option Exercise Price (\$)	Option Expiration Date	Number of Shares or Units of Stock That Have Not Vested (#)	Market Value of Shares or Units of Stock That Have Not Vested (\$)	Equity Incentive Plan Awards: Market Value of Unearned Shares, Units or Rights That Have Not Vested (\$)	Equity Incentive Plan Awards: Market Value of Unearned Shares, Units or Rights That Have Not Vested (\$)
Greg Scholl <i>President and Chief Executive Officer</i>		33,333		\$ 7.44		11/13/2014	33,333	108,332		
Barth Ballard <i>Former Interim Chief Executive Office</i>	3,333			14.97		04/17/2014				
	2,666			19.50		06/12/2013				
Karen Davis <i>Former Interim Chief Executive Officer</i>	9,896			14.97		03/22/2013				
Mitchell Koulouris <i>Former Chief Executive</i>										

<i>Officer</i>					
Brad Navin	5,000	7.44	11/13/2014	11,667	37,918
<i>Executive Vice President and General Manager</i>					
Stanley H. Schneider	3,333	7.44	11/13/2014	3,333	10,832
<i>Executive Vice President, General Counsel and Secretary</i>					
Scott Cohen	1,667	7.44	11/13/2014	1,667	5,418
<i>Founder and Vice President, International</i>					
Richard Gottehrer	1,667	7.44	11/13/2014	1,667	5,418
<i>Founder and Chief Creative Officer</i>					
Tuhin Roy					
<i>Former Chief Strategy Officer and President of DRA</i>					
Brian Perry	1,666	12.06	03/30/2008		
<i>Former Vice President</i>	2,500	12.39	09/08/2013		
<i>Controller</i>					

### **Employment Agreements and Post-Termination Payments**

We have entered into employment agreements with our current executive officers, including Messrs. Scholl, Fong, Navin, Pifer, Haase and Schneider. With the exception of Mr. Schneider's agreement, each agreement has a term of three years, unless earlier terminated by us without cause (as defined in the agreements) upon 30 days written notice or for cause (as defined in the agreements) upon 10 days written notice, unless cured by the executive where applicable. In addition, each executive may terminate the agreement upon written notice for good reason (as defined in the agreements) or no reason, as defined in the agreements. These agreements provide that if the executive's employment is terminated by us for cause or voluntarily by the executive, such executive will be entitled to receive compensation and benefits through the date of termination, except that there will be no proration of any potential annual incentive bonus for the fiscal year in which termination occurs. In addition, these agreements, except for Mr. Scholl's, provide that if the agreement is terminated by us without cause or by the executive for good reason, the executive will be entitled to receive compensation and benefits through the remaining term of the agreement or for a period of six months following the date of termination, whichever is shorter, and the executive shall be entitled to a pro rata portion of the annual incentive bonus otherwise due the executive for the fiscal year in which termination occurs. In the case of Mr. Scholl's agreement, if Mr. Scholl's employment is terminated by us

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without cause or by Mr. Scholl for good reason, he will be entitled to receive compensation and benefits through the remaining term of the agreement or for a period of one year following the date of termination, whichever is longer, and Mr. Scholl shall be entitled to a pro rata portion of the annual incentive bonus otherwise due for the fiscal year in which termination occurs.

Mr. Schneider's agreement has a term of two years, unless earlier terminated by us without cause upon 90 days written notice or for cause upon 10 days written notice unless cured or successfully defended by Mr. Schneider, as applicable. Mr. Schneider's agreement provides that if his employment is terminated by us for cause or voluntarily by Mr. Schneider, he will be entitled to receive compensation and benefits through the date of termination. In addition, Mr. Schneider's agreement provides that if the agreement is terminated by us without cause or by Mr. Schneider for good reason, both as defined in the agreement, he will be entitled to receive compensation and benefits through the remaining term of the agreement.

As part of our employment agreement with Mr. Scholl, he received 33,333 restricted shares of our common stock as well as the option to purchase 33,333 shares of our common stock, pursuant to the terms and conditions of our Amended and Restated 2005 Stock Plan. Such stock options and shares of restricted common stock are to vest quarterly in six equal installments. In the event that the agreement is terminated by us without cause or by the Mr. Scholl for good reason, such awards shall become fully vested. The stock options will expire seven years after November 13, 2007 the effective date of Mr. Scholl's employment agreement.

As part of our employment agreement with Mr. Fong, he received 33,333 restricted shares of our common stock as well as the option to purchase 33,333 shares of common stock, pursuant to the terms and conditions of our Amended and Restated 2005 Stock Plan. As part of our employment agreements with Messrs. Navin and Pifer, each received 11,667 restricted shares of our common stock as well as the option to purchase 5,000 shares of our common stock, pursuant to the terms and conditions of our Amended and Restated 2005 Stock Plan. As part of our employment agreement with Mr. Haase, he received 10,000 restricted shares of our common stock as well as the option to purchase 5,000 shares of our common stock, pursuant to the terms and conditions of our Amended and Restated 2005 Stock Plan. For each of these executives, the stock options and shares of restricted common stock granted are to vest 33.3% after the first twelve months and then quarterly in eight equal installments thereafter. In the event that the agreement is terminated by us without cause or by the executive for good reason, the vesting of the foregoing awards will be accelerated by six months. The stock options will expire seven years after the effective date of the agreement.

Each employment agreement includes provisions that prohibit the executives from disclosing our confidential information and trade secrets, assigns all intellectual property developed by the executives in the course of their employment to us and prohibits the executives from competing with us or soliciting our employees during the term of the employment agreement and for a period ranging from six months to one year following termination of employment as specified in each executive's agreement, except in the case of Mr. Schneider's agreement which specifies a two-year period of non-competition following termination of employment.

## **Section 16(a) Beneficial Ownership Reporting Compliance**

Section 16(a) of the Exchange Act requires our executive officers, directors and persons who beneficially own more than 10% of our common stock to file initial reports of ownership and reports of changes in ownership with the SEC. Such persons are required by SEC regulations to furnish us with copies of all Section 16(a) forms filed by such persons. To our knowledge, based solely upon our review of such forms or certain written representations from such reporting persons, we believe that in 2007 all of our executive officers, directors and greater than 10% beneficial owners were in compliance with all applicable filing requirements.

## **CERTAIN TRANSACTIONS**

We have entered into indemnification agreements with each of our directors and executive officers. These agreements require us to indemnify such individuals, to the fullest extent permitted by Delaware law, for certain liabilities to which they may become subject as a result of their performance of services on our behalf. The form of indemnification agreement is filed as an exhibit to our annual report on Form 10-K.

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**TRANSACTIONS WITH RELATED PERSONS**

*Operating Lease With Affiliate* In April 2006, the Company began utilizing space subleased by eMusic an entity under common ownership and control, with no formal sublease agreement in place. The Company paid the lessee directly for the space utilized. For the year ended December 31, 2007, the Company incurred expenses of approximately \$193,697 under this arrangement. In August 2007, the sublease to this space was assigned by eMusic to the Company. The lease expires in January 2009.

*Legal Costs* The Company has engaged several outside legal firms to represent its general business interests. One such firm employs a family member of Mr. Stein, a member of our Board of Directors. Amounts included in operating expenses in connection with the services performed by this legal firm were \$2,263 for the year ended December 31, 2007. In addition, we incurred \$1,070,109 in 2007 in fees from this firm for services that were capitalized for accounting purposes into the purchase price of the merger between the Company and Orchard NY.

*Distribution Services With eMusic* eMusic provides digital music distribution services to the Company under a Digital Music Wholesale Agreement, dated January 1, 2004, as amended on March 12, 2007. eMusic is an entity controlled by Dimensional. The agreement grants eMusic worldwide rights, on a non-exclusive basis, to exploit the Company's master recordings digitally and via the Internet through December 31, 2009. Pursuant to the agreement, the Company is entitled to better royalty terms if eMusic allows any other independent record label such better terms during the term of the agreement, or a Most Favored Nation clause. Amounts included in revenues in connection with these services were \$3,014,494 for the year ended December 31, 2007. Amounts included in accounts receivable in connection with these services were \$1,075,602 at December 31, 2007.

*Other* The Company has distribution agreements with certain labels whereby it is not permitted to charge distribution fees to the label or artist for sales by eMusic. For the year ended December 31, 2007, the Company received revenues of \$840,629 from eMusic relating to such agreements. These amounts were recorded in revenues with an equal amount recorded in cost of revenues.

**STOCKHOLDER PROPOSALS TO BE PRESENTED AT NEXT ANNUAL MEETING**

Proposals of stockholders that are intended for inclusion in our proxy statement relating to the 2008 Annual Meeting of Stockholders of our Company must be received by us at our offices at 100 Park Avenue, 2nd Floor, New York, New York 10017, Attention: Secretary, not later than 120 days prior to June 4, 2009 and must satisfy the conditions established by the SEC for stockholder proposals in order to be included in our proxy statement for that meeting. Stockholder proposals that are not intended to be included in our proxy materials for such meeting but that are intended to be presented by the stockholder from the floor are subject to the advance notice procedures described below under TRANSACTION OF OTHER BUSINESS.



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**TRANSACTION OF OTHER BUSINESS**

At the date of this Proxy Statement, the only business that the Board intends to present or knows that others will present at the meeting is as set forth above. If any other matter or matters are properly brought before the meeting, or any adjournment thereof, it is the intention of the persons named in the accompanying form of proxy to vote the proxy on such matters in accordance with their best judgment.

Any stockholder may present a matter from the floor for consideration at a meeting so long as certain procedures are followed. Under our Bylaws, as amended, in order for a matter to be deemed properly presented by a stockholder, timely notice must be delivered to, or mailed and received by us, not later than 120 days prior to the next annual meeting of stockholders (under the assumption that the next annual meeting of stockholders will occur on the same calendar day as the day of the most recent annual meeting of stockholders). The stockholder's notice must set forth, as to each proposed matter, the following: (a) a brief description of the business desired to be brought before the meeting and reasons for conducting such business at the annual meeting; (b) the name and address, as they appear on our books, of the stockholder proposing such business; (c) the class and number of our shares that are beneficially owned by the stockholder; and (d) any material interest of the stockholder in such business. The presiding officer of the meeting may refuse to acknowledge any matter not made in compliance with the foregoing procedure.

By Order of the Board of Directors,

Stanley H. Schneider  
*Secretary*

New York, New York  
April 29, 2008

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**Appendix A**

[Note: Following is the text of the proposed The Orchard Enterprises, Inc. 2008 Stock Plan, which has been marked to indicate proposed changes to the currently effective Digital Music Group, Inc. Amended and Restated 2005 Stock Plan. Proposed additions are indicated by a double underscore and proposed deletions are indicated by a ~~strikethrough~~.]

**The Orchard Enterprises, Inc. 2008 Stock Plan**

(as proposed to be adopted on June 4, 2008)

**Preamble**

The Digital Music Group, Inc. Amended and Restated 2005 Stock Plan is further amended and restated as set forth herein, and nothing herein is intended to substantively alter or adversely impact Awards previously granted.

Article 1

Purpose

The purpose of this plan is to recognize and reward participants for their efforts on the Company's behalf, to motivate participants by appropriate incentives to contribute to the Company's attainment of its long-term performance objectives, and to align participants' interests with those of the Company's other stockholders through compensation based on the performance of the Company's common stock over a long-term period.

Article 2

Definitions

*Award* means an Option, SAR Award or Restricted Stock under the Plan.

*Award Agreement* means a written or electronic agreement between the Company and a Participant incorporating the terms of an Award to the Participant.

*Board* means the Company's Board of Directors.

*Change of Control* is defined in Article 6.

*Common Stock* means the Company's common stock, par value \$.01 per share.

*Committee* is defined in ~~Paragraph~~  
Section

3.1. Unless the Board designates a different committee, the Compensation Committee of the Board shall serve as the Committee.

*Company* means ~~Digital Music Group~~  
The Orchard Enterprises

, Inc., a Delaware corporation.

*Consultant* means any individual serving as a consultant, advisor or vendor rendering services to the Company or a Subsidiary.

*Director* means a member of the Board of Directors of the Company.

*Eligible Person* means, in respect of all types of Awards except ISOs, any Employee, Director or Consultant and, in respect of ISOs, any Employee.

*Employee* means a full-time employee of the Company or a Subsidiary.

*Exchange Act* means the Securities Exchange Act of 1934, as amended.

*Expiration Date* means the last day on which an Option or SAR may be exercised.

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*Fair Market Value* means, for a given day, the value of a share of Common Stock determined as follows:

- (i) if the Common Stock is listed on any established stock exchange or a national market system, the last reported sales price of a share of Common Stock on such exchange or market system on the date of determination; and
- (ii) if the Common Stock is regularly quoted by a recognized securities dealer but selling prices are not reported, the mean between the high bid and low asked prices for the Common Stock on the date of determination.

~~For purposes of any Award granted on the date of the initial public offering of shares of Common Stock of the Company, the Fair Market Value will be the initial price to the public as set forth in the final prospectus included within the Registration Statement on Form S-1 filed with the Securities and Exchange Commission.~~

*Grant Date* means, in respect of an Award, the date that the Committee grants the Award or any later date that the Committee specifies as the effective date of the Award.

*IRC* means the Internal Revenue Code of 1986, as amended.

*ISO* means an incentive stock option described in § 422 of the IRC.

*NSO* means a nonstatutory stock option (i.e., a stock option that is not an ISO).

*Option* means an option to purchase shares of Common Stock granted to an Eligible Person under Article 5. An Option shall be either an ISO or a NSO as the Committee designates.

*Participant* means any Eligible Person who holds an Award under the Plan.

*Plan* means this plan, as it may be amended. The name of this Plan is the ~~Digital Music Group, Inc. Amended and Restated 2005~~  
The Orchard 2008  
Stock Plan.

*post-Split basis*

means after giving effect to the one-for-three reverse stock split of the Common Stock, effective November 14, 2007.

*Restricted Stock* means shares of Common Stock issued to an Eligible Person under Article 5.

*SAR*, or stock appreciation right, means a contractual right to receive a payment representing the excess of the Fair Market Value of a share of Common Stock on the date that the right is exercised over the base price per share of the right.

*SAR Award* means an award of a Stand-Alone SAR or Tandem SAR to an Eligible Person under Article 5.

*Series A Preferred Stock*

means the Company's Series A Convertible Preferred Stock.

*Stand-Alone SAR* means an SAR that is not related to an Option.

*Subsidiary* means a subsidiary corporation as defined in § 424(f) of the IRC.

*Tandem SAR* means an SAR that is related to an Option.

*Termination Date* means the date of termination of employment of an Employee by the Company or a Subsidiary. A transfer of employment from the Company to a Subsidiary, or from a Subsidiary to the Company or to another Subsidiary, shall not be considered a termination of employment, nor will transfer from full-time employment to a consulting agreement, provided that the terms of the consulting agreement are set forth in writing and such agreement is for one year or less (including all option periods).

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Article 3

Administration

3.1 *Committee*

The Board of Directors shall designate a committee of the Board (the *Committee*) to administer the Plan. The Committee shall consist of two or more directors, all of whom shall be (i) *non-employee directors* as defined in Rule 16b-3 under the Exchange Act, (ii) *independent directors* under the applicable listing standards of the primary exchange or market on which the Company's Common Stock is listed for trading, and (iii) *outside directors* under § 162(m) of the IRC. Unless otherwise determined by the Board, the members of the Compensation Committee of the Board shall constitute the Committee for purposes of this Plan.

3.2 *Authority*

Subject to the terms of the Plan, the Committee shall have the authority to select the Eligible Persons to whom Awards are to be granted and to determine the time, type, number of shares, restrictions, limitations and other terms and conditions of each Award.

The Committee may interpret the Plan, adopt, revise and rescind policies and procedures to administer the Plan, and make all factual and other determinations required for the Plan's administration.

Awards under the Plan need not be uniform in respect of different Eligible Persons, whether or not similarly situated. The Committee may consider such factors as it deems relevant in selecting Eligible Persons for Awards and in determining their Awards.

The Committee's determinations, interpretations and other actions shall be final and binding. No member of the Committee shall be liable for any action of the Committee undertaken in good faith.

3.3 *Procedures*

The Board shall elect a chairman for the Committee, and the Committee shall meet as necessary at the call of the chairman or any two members of the Committee or the Chairman of the Board of the Company. A majority of the members of the Committee shall constitute a quorum, and all actions of the Committee at a meeting at which a quorum is present shall be taken by majority vote.

A member of the Committee may participate in any meeting of the Committee by a conference telephone call or other means that enable all persons participating in the meeting to hear one another, and participation in this manner shall constitute his or her presence in person at the meeting. The Committee also may act by the unanimous written consent of its members.

Article 4

Plan Operation

4.1 *Effective Date*

This Plan shall ~~become~~  
be

effective ~~if and when it is approved~~  
on December 31, 2005, a date that follows its approval  
by both the Board and the Company's stockholders (the Effective Date). Awards may not be granted under the Plan  
prior to ~~stockholder approval~~  
such date.

#### 4.2 *Term*

This Plan shall have a term ~~of 10 years, expiring on the tenth anniversary of the Effective Date~~  
December 1, 2015  
(but remaining in effect, however, for Awards outstanding as of that date). No Award may be granted under the Plan  
after its expiration.

#### 4.3 *Maximum Number of Shares*

The maximum total number of shares of Common Stock for which Awards may be granted under this Plan  
is ~~1,200,000~~  
1,000,000  
shares  
(on a post-Split basis)  
, plus an annual increase to be added on the first day of  
each of  
the

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Company's fiscal year

years

beginning in ~~2007~~,

2009

equal to the lesser of ~~(a) 400,000~~

250,000

shares

(on a post-Split basis)

, (b) 5% of the ~~outstanding~~

number of

shares of Common Stock

outstanding

on such date ~~or~~

and

(c) an amount determined by the Board.

The shares for which Awards may be granted shall be shares of Common Stock currently authorized but unissued or shares that the Company currently holds or subsequently acquires as treasury shares, including shares purchased in the open market or in private transactions.

*4.4 Shares Available for Awards*

The determination of the number of shares of Common Stock available for Awards under the Plan shall take into account the following:

(a) If an Option or SAR lapses or expires unexercised, the number of shares in respect of which the Option or SAR lapsed or expired shall be added back to the available number of shares of Common Stock for which Awards may be granted.

(b) If shares of Restricted Stock are repurchased by the Company pursuant to the terms of the Award, such repurchased shares shall be added back to the available number of shares of Common Stock for which Awards may be granted.

(c) If a SAR is settled in cash, the number of shares in respect of which the SAR was settled in cash shall not be added back to the available number of shares of Common Stock for which Awards may be granted.

(d) If the exercise price of an Option is paid by delivery of shares of Common Stock pursuant to ~~Paragraph~~ Section

5.8, the number of shares of Common Stock issued upon exercise of Option, without netting of the shares of Common Stock delivered in payment of the exercise price, shall be taken into account for purposes of determining the available number of shares of Common Stock for which Awards may be granted.

*4.5 Individual Limit on Awards*

The maximum number of shares of Common Stock for which Awards may be granted to any Eligible Person in a calendar year shall not exceed 200,000 shares

(on a post-Split basis)

, taking into account all grants and awards under other stock option and equity compensation plans of the Company.



#### 4.6 *Capitalization Adjustments*

All share numbers included herein shall be adjusted for any stock split, stock dividend, recapitalization or the like.

In the event of a change in the number of outstanding shares of Common Stock of the Company by reason of a stock dividend, stock split, recapitalization, reorganization and the like, the number of shares of Common Stock for which Awards may be granted under the Plan as stated above in ~~Articles~~

Sections

4.3, 4.4 and 4.5, the aggregate number of shares of Common Stock in respect of each outstanding Award, and the exercise price of each outstanding Option and SAR shall automatically be adjusted pro-rata and accordingly under the circumstances, with the Committee to use its discretion and judgment where necessary to interpret the Company action and determine the appropriate adjustments to be made in this regard, with the Committee's decisions to be final and binding.

### Article 5

#### Stock Options, SARs and Restricted Stock

##### 5.1 *Grant*

The Committee may grant an Option or SAR or shares of Restricted Stock to any Eligible Person. Subject to the terms of this Plan, the Committee shall determine the restrictions, limitations and other terms and conditions of each Option, SAR Award and Restricted Stock Award.

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The Committee shall designate each Option as either an ISO or NSO, and shall designate each SAR Award as either a Stand-Alone SAR or a Tandem SAR. A Tandem SAR may not be granted later than when its related Option is granted.

### *5.2 Exercise Price*

The Committee shall determine the exercise price of each Option and the base price of each SAR. The exercise or base price per share may not be less than the Fair Market Value on the Grant Date of the Option or SAR.

### *5.3 Vesting and Term*

The Committee shall determine the time or times at which each Option, Stand-Alone SAR and Restricted Grant Award becomes vested. Vesting may be based on continuous service or on the satisfaction of specified performance goals or other conditions. A Tandem SAR shall vest if and to the extent that its related Option vests, and shall expire or be cancelled when its related Option expires or is cancelled. No Option or SAR may have an Expiration Date more than 10 years from its Grant Date.

Vesting of Awards granted hereunder will be suspended during any paid or unpaid leave of absence by an Employee. For purposes of ISOs, no such leave may exceed 90 days, unless reemployment upon expiration of such leave is guaranteed by statute or contract. If reemployment upon expiration of a leave of absence approved by the Company is not so guaranteed, then three months following the 91st day of such leave, any ISO held by the Employee will cease to be treated as an ISO and will be treated for tax purposes as a NSO. Upon reemployment following a leave of absence, vesting will recommence as of the date of reemployment, and the term of all Awards will be extended by the number of days under the leave of absence, unless such extension would cause the Award to be outstanding for longer than 10 years. After 270 consecutive days under a leave of absence, an Employee will be treated as terminated for purposes of applying the provisions of ~~Article~~ Section

5.4(c) below with respect to any vested Options and SARs, with the 271st day considered to be the Termination Date.

Notwithstanding anything to the contrary in the underlying Award Agreement, each outstanding Option and SAR and shares of Restricted Stock held by a Participant shall become fully vested as of his or her Termination Date if the Participant's relationship with the Company terminates by reason of his or her death.

The Company or its designee shall hold, as escrow agent, all shares of Restricted Stock until all restrictions on such shares have lapsed. Notwithstanding the foregoing, the person to whom such shares have been awarded may exercise full voting rights with respect to such shares and will be entitled to receive all dividends and other distributions paid with respect to such Restricted Stock unless otherwise provided in the Award Agreement.

### *5.4 Termination of Employment*

In the case of an Option or SAR or shares of Restricted Stock held by an Employee whose employment terminates:

(a) if and to the extent that an Option or SAR is unvested as of the Employee's Termination Date, the Option or SAR shall lapse on the Termination Date;

(b) if and to the extent any shares of Restricted Stock are unvested as of the Employee's Termination Date, the Company shall have the right to repurchase such shares on such terms as shall be specified in the underlying Award Agreement; and

(c) if and to the extent that an Option or SAR is vested as of the Employee's Termination Date, the Option or SAR shall expire (i) on the earlier of (A) 90 days after the Employee's Termination Date or (B) the expiration date of the Option or SAR, or (ii) if the Employee's employment terminated by reason of his or her death, on the earlier of (A) the first anniversary of the Employee's death or (B) the expiration date of the Option or SAR.

Neither the Company nor the Committee shall be under any duty to provide notification to the Participant of the specific terms of this ~~Article~~

Section

5.4 upon the termination of an Employee or at any other time.

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### *5.5 Transferability*

Except as provided in the underlying Award Agreement or as permitted by the Committee, no Option, SAR or shares of Restricted Stock may be transferred, assigned or pledged, whether by operation of law or otherwise, except as provided by will or the applicable laws of intestacy. No Option, SAR or shares of Restricted Stock shall be subject to execution, attachment or similar process. An Option or SAR may be exercised only by the Participant, except in the case of his or her death, when the Option or SAR may be exercised by the person or persons to whom it passes by will or the applicable laws of intestacy.

### *5.6 Additional ISO Rules*

To the extent that the aggregate fair market value (determined in respect of each ISO on the basis of the Fair Market Value of a share of Common Stock on the ISO's Grant Date) of the underlying shares of all ISOs that become exercisable by an Employee for the first time in any calendar year exceeds \$100,000, the Options shall be treated as NSOs. This limitation shall be applied by taking ISOs into account in the order in which they were granted.

The Award Agreement underlying an Option that the Committee designates as an ISO shall contain any additional terms, beyond those of this Plan, that the Committee considers necessary or desirable to include to assure that the Option complies with the requirements of § 422 of the IRC.

### *5.7 Manner of Exercise*

A vested Option or SAR may be exercised in full or in part (but only in respect of a whole number of shares) by (i) written notice to the Committee (or to its designee) stating the number of shares in respect of which the Option or SAR is being exercised and, in the case of an Option, (ii) full payment of the exercise price of those shares.

### *5.8 Payment of Exercise Price*

Payment of the exercise price of an Option shall be made by check or, if permitted by the Committee in the underlying Award Agreement, by: (i) delivery of shares of Common Stock having a Fair Market Value on the date of exercise equal to the exercise price; (ii) directing the Company to withhold, from the shares otherwise issuable upon exercise of the Option, shares having a Fair Market Value on the date of exercise equal to the exercise price; (iii) by an open-market broker-assisted sale pursuant to which the Company is promptly delivered the portion of the sales proceeds necessary to pay the exercise price; or (iv) any combination of these methods of payment.

### *5.9 Tandem SARs*

A Tandem SAR shall entitle the Participant to elect to exercise either the SAR or the related Option as to all or any portion of the shares subject to the SAR and Option. The exercise of a Tandem SAR shall cause the immediate and automatic cancellation of its related Option with respect to the same number of shares, and the exercise, expiration or cancellation of the related Option (other than by reason of the exercise of the Tandem SAR) shall cause the automatic and immediate cancellation of the Tandem SAR with respect to the same number of shares.

### *5.10 Settlement of SARs*

Settlement of a SAR may be made, in the Committee's discretion at the time the Award is granted, in shares of Common Stock or in cash, or in a combination of the two, subject to applicable tax withholding requirements. The settlement of a SAR shall be made on the basis of the Fair Market Value of a share of Common Stock on the date that the SAR is exercised.

5.11 *No Repricing*

The Committee may not amend, substitute or cancel an Option or SAR in a manner that has the effect of reducing the exercise price of the Option or the base price of the SAR unless the repricing is approved by the Company's stockholders.

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*5.12 Formula Option Grants to Non-Employee Directors*

All grants of Options to non-Employee Directors pursuant to this Section 5.12 will be automatic and nondiscretionary, except as otherwise provided herein, and will be made in accordance with the following provisions:

~~(a) Type of Option. All Options granted pursuant to this Section will be NSOs and, except as otherwise provided herein, will be subject to the other terms and conditions of the Plan.~~

~~(b) No Discretion. No person will have any discretion to select which non-Employee Directors will be granted Options under this Section or to determine the number of Shares to be covered by such Options (except as provided in Section 4.6).~~

~~(c) IPO and Initial Option. Each person named as a Director nominee or as a non-Employee Director in the prospectus for the initial public offering of shares of Common Stock of the Company who becomes or continues to serve as a non-Employee Director upon or shortly after the consummation of the offering will be automatically granted an Option to purchase 24,000 shares of Common Stock (the **IPO Option**), effective at the first meeting of the Board following the initial public offering. Thereafter, each person who first becomes a non-Employee Director will be automatically granted an Option to purchase 12,000 shares of Common Stock (the **Initial Option**) on or about the date on which such person first becomes a non-Employee Director, whether through election by the stockholders of the Company or appointment by the Board to fill a vacancy; provided, however, that an Employee Director who ceases to be an Employee, but who remains a Director, will not receive an Initial Option.~~

~~(d) Annual Option. Each non-Employee Director will be automatically granted an Option to purchase 6,000 shares of Common Stock (an **Annual Option**) on each date of the annual meeting of the stockholders of the Company beginning in 2006, if as of such date, he or she will have served on the Board for at least the preceding six (6) months.~~

~~(e) Terms. The terms of each Option granted pursuant to this Section 5.12 will be as follows:~~

~~i. The term of the Option will be ten (10) years.~~

~~ii. The exercise price per Share for the IPO Option will be the initial price to the public as set forth in the final prospectus included within the Registration Statement on Form S-1 filed with the Securities and Exchange Commission. The exercise price for the Initial Option and the Annual Option will be 100% of the Fair Market Value per share of Common Stock on the date of grant of the Option.~~

~~iii. The IPO Option will vest and become exercisable as to one twenty-fourth (1/24th) of the Shares each month following the date of grant, provided that the Participant continues to serve as a Director through each such vesting date.~~

~~iv. The Initial Option and the Annual Option will vest and become exercisable as to one twelfth (1/12th) of the shares of Common Stock each month following the date of grant, provided that the Participant continues to serve as a Director through each such vesting date.~~

~~v. If and to the extent that any Option is vested as of the date that the Director ceases to serve on the Board, the Option shall expire (i) on the earlier of (A) 90 days after the date that the Director ceases to be a member of the Board or (B) the expiration date of the Option, or (ii) if the Director's service is terminated by reason of his or her death, on the earlier of (A) the first anniversary of the Director's death or (B) the expiration date of the Option.~~

*[Section 5.12 is intentionally omitted as June 4, 2008.]*



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Article 6

Change of Control

Upon a Change of Control, as defined below, all outstanding Awards shall become fully vested and exercisable and all restrictions on shares underlying any Restricted Stock Awards shall lapse (subject to the consummation of such Change of Control). The Company shall notify each Participant in writing or electronically not less than fifteen days prior to a Change of Control, which notice shall advise the Participants as to the vesting of and lapse of restrictions on their Awards in connection with such contemplated Change of Control. Such notice shall also include either (a) a statement that all Awards will be assumed or substituted with equivalent options or rights in the Change of Control transaction, or (b) if no such assumption or substitution will take place, the specific steps that Participants will need to take if they intend to exercise Options and/or SARs immediately prior to and contingent upon the consummation of the Change of Control. If any Options or SARs are not assumed in a Change of Control or exercised pursuant to the required notice being provided to Participants, such Options and SARs shall terminate immediately upon the consummation of the Change of Control.

A Change of Control means an event or the last of a series of related events by which:

- (a) any Person directly or indirectly acquires or otherwise becomes entitled to vote stock having 51% or more of the voting power in elections for Directors; or
- (b) the Company merges or consolidates with another corporation, and holders of outstanding shares of the Company's Common Stock immediately prior to the merger or consolidation do not own stock in the survivor of the merger or consolidation having more than 50% of the voting power in elections for directors; or
- (c) the Company sells all or a substantial portion of the consolidated assets of the Company and its Subsidiaries, and the Company does not own stock in the purchaser having more than 50% of the voting power in elections for directors.

As used in this Article 6, a Person means any person as that term is used in sections 13(d) and 14(d) of the Exchange Act, together with all of that person's affiliates and associates as those terms are defined in Rule 12b-2 under the Exchange Act.

Article 7

Miscellaneous Provisions

*7.1 Award Agreement*

Each Award under the Plan shall be evidenced by an Award Agreement, which shall be subject to and incorporate the terms of the Plan. Such Award Agreement must be signed and returned to the Company Secretary (or other such designated person) by the recipient within 30 days of receipt for such recipient to become a Participant.

*7.2 Tax Withholding*

The Company shall withhold or collect from the Participant an amount sufficient to satisfy its withholding tax obligations, if any, in connection with any Award under the Plan, and the Company may defer making any payment or delivery of shares pursuant to an Award unless and until the Participant pays such withholding tax or indemnifies the Company to the Committee's satisfaction. The amount of the withholding requirement shall be calculated to include



any amount which the Committee believes should be withheld to satisfy federal, state, local and any other taxing jurisdictions at the time the election is made.

*7.3 Amendment and Termination*

The Board may amend, suspend or terminate the Plan at any time. The Company's stockholders shall be required to approve any amendment that would materially increase the number of shares of Common Stock for which Awards may be granted or that would increase the number of shares of Common Stock for which ISOs may be granted (other than an amendment authorized under ~~Paragraph~~

Section

4.6). If the Plan is terminated, the Plan

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shall remain in effect for Awards outstanding as of its termination. No amendment, suspension or termination of the Plan shall adversely affect the rights of the holder of any outstanding Award without his or her consent.

*7.4 Foreign Jurisdictions*

The Committee may adopt, amend and terminate a supplement to the Plan to permit Employees in another country to receive Awards under the supplement (on terms not inconsistent with the terms of Awards under the Plan) in compliance with that country's securities, tax and other laws.

*7.5 No Right To Employment*

Nothing in this Plan or in any Award Agreement shall confer on any person the right to continue in the employ of the Company or any Subsidiary or limit the right of the Company or Subsidiary to terminate his or her employment.

*7.6 Notices*

Notices required or permitted under this Plan shall be considered to have been duly given if sent by certified or registered mail addressed to the Committee at the Company's principal office or to any other person at his or her address as it appears on the Company's payroll or other records.

*7.7 Severability*

If any provision of this Plan is held illegal or invalid for any reason, the illegality or invalidity shall not affect the remaining provisions, and the Plan shall be construed and administered as if the illegal or invalid provision had not been included.

*7.8 Governing Law*

This Plan and all Award Agreements shall be governed in accordance with the laws of the State of California.

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Annual Meeting Proxy Card THE ORCHARD ENTERPRISES, INC. 100 Park Avenue, 2nd Floor New York, New York 10017 A. Proposals The Board of Directors recommends a vote FOR all the nominees listed and FOR Proposals 2 and 3. 1. Election of Directors: For Withhold David Altschul o o Viet Dinh o o Michael Donahue o o Nathan Peck o o Greg Scholl o o Danny Stein o o Joel Straka o o 2. To ratify the appointment of Marcum & Kliegman LLP as our independent registered public accountants for fiscal year 2008. o FOR o AGAINST o ABSTAIN 3. To approve the adoption of The Orchard Enterprises, Inc. 2008 Stock Plan, which further amends our Amended and Restated 2005 Stock Plan. o FOR o AGAINST o ABSTAIN 4. To transact such other business as may properly come before the meeting or any adjournment or postponement of the meeting. B. Non-Voting Items Change of Address Please print new address below. C. Authorized Signatures This section must be completed for your vote to be counted. Date and Sign Below.

Please sign exactly as name(s) appears hereon. Joint owners should each sign. When signing as attorney, executor, administrator, corporate officer trustee, guardian, or custodian, please give full title. Date (mm/dd/yyyy) Signature 1 Please Signature 1 Please Please print date keep signature within keep signature within below. the box. the box.

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Proxy THE ORCHARD ENTERPRISES, INC. 100 Park Avenue, 2nd Floor New York, New York 10017 THIS PROXY IS SOLICITED ON BEHALF OF THE BOARD OF DIRECTORS The undersigned hereby appoints Nathan Fong and Stanley H. Schneider as proxies, each with full power to appoint substitutes, and hereby authorizes them or either of them to represent and to vote as designated below, all the shares of common stock of The Orchard Enterprises, Inc. held of record by the undersigned as of April 24, 2008, at the Annual Meeting of Shareholders to be held at the offices of Reed Smith LLP, 599 Lexington Avenue, 22nd Floor, New York, New York 10022 at 10:00 a.m. (EDT), on June 4, 2008, and any adjournments or postponements thereof, and hereby ratifies all that said proxies may do by virtue hereof. THIS PROXY, WHEN PROPERLY EXECUTED, WILL BE VOTED IN THE MANNER DIRECTED HEREIN BY THE UNDERSIGNED SHAREHOLDER. IF NO DIRECTION IS MADE, THIS PROXY WILL BE VOTED FOR PROPOSALS ONE, TWO AND THREE. THIS PROXY ALSO DELEGATES DISCRETIONARY AUTHORITY TO VOTE WITH RESPECT TO OTHER BUSINESS WHICH PROPERLY MAY COME BEFORE THE MEETING, OR ANY ADJOURNMENTS OR POSTPONEMENTS THEREOF. IN THEIR DISCRETION, THE PROXIES ARE AUTHORIZED TO VOTE UPON SUCH OTHER BUSINESS AS MAY PROPERLY COME BEFORE THE MEETING. PLEASE READ, SIGN, DATE AND RETURN THIS PROXY PROMPTLY USING THE ENCLOSED ENVELOPE. THE UNDERSIGNED HEREBY ACKNOWLEDGES RECEIPT OF THE NOTICE OF ANNUAL MEETING AND PROXY STATEMENT FURNISHED IN CONNECTION THEREWITH.