

Purchase Agreement Exhibit E- FINAL FORM

SECURED PROMISSORY NOTE

THIS SECURED PROMISSORY NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED. IT MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF REGISTRATION OR AN EXEMPTION THEREFROM UNDER SAID ACT.

THIS PROMISSORY NOTE HAS BEEN ISSUED WITH "ORIGINAL ISSUE DISCOUNT" (WITHIN THE MEANING OF SECTION 1272 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED). UPON WRITTEN REQUEST, PAYOR WILL PROMPTLY MAKE AVAILABLE TO PAYEE THE FOLLOWING INFORMATION: (1) THE ISSUE PRICE AND DATE OF THE PROMISSORY NOTE, (2) THE AMOUNT OF ORIGINAL ISSUE DISCOUNT ON THE PROMISSORY NOTE AND (3) THE YIELD TO MATURITY OF THE PROMISSORY NOTE. PAYEE SHOULD CONTACT [APPROPRIATE (A) NAME OR TITLE AND (B) ADDRESS OR TELEPHONE NUMBER].

MERLIN MEDIA, LLC

SECURED PROMISSORY NOTE
DUE [_____, 2016]

\$60,000,000.00

[Date of Issuance]

MERLIN MEDIA, LLC, a Delaware limited liability company ("Payor"), for value received, promises to pay to [_____,] a _____ ("Payee"), or its permitted assigns, the principal amount of Sixty Million and 00/100 Dollars (\$60,000,000.00), plus the amount of any PIK Interest added to the principal hereof in accordance with Section 1.1 below, together with interest accrued thereon, calculated and payable only as and to the extent set forth below in this Secured Promissory Note (this "Promissory Note"). The principal and

interest on this Promissory Note is payable in lawful money of the United States of America in immediately available funds at such place in the United States as Payee may from time to time designate in writing to Payor.

This Promissory Note is secured by the Security Agreement dated as of the date hereof. Reference is hereby made to the Security Agreement for a description of the nature and extent of the security for this Promissory Note.

1. Payment of Principal and Interest

1.1 Calculation and Payment of Interest.

Interest on the principal balance of this Promissory Note outstanding from time to time until paid in full shall accrue at the rate of fifteen percent (15.0%) per annum, in each case, computed on the basis of a 365 or 366-day year, as appropriate, for the actual number of days elapsed, commencing on the date hereof. Such interest shall be payable semi-annually in arrears, beginning on [June 30, 2012][December 31, 2011] and thereafter on each June 30th and December 31st (each, an "Interest Payment Date") until the Maturity Date, either in cash or, at the option of Payor, by adding the amount of interest accrued but not otherwise paid since the immediately preceding Interest Payment Date (such amount, the "PIK Interest") to the principal amount of this Promissory Note. Payee, by its acceptance hereof, acknowledges (i) that Payor is not contractually bound hereunder to pay cash interest, (ii) that any PIK Interest shall be added to the principal amount of this Promissory Note and (iii) the failure to pay cash interest shall not constitute a default or Event of Default under this Note.

1.2 Voluntary Prepayment.

(a) Payor may, at its option at any time prepay, without premium or penalty, all or any portion of this Promissory Note.

(b) Any prepayment of this Promissory Note shall be applied as follows: first, to any expenses then due and payable to Payee pursuant to the Loan Documents, second, to payment of any accrued and unpaid interest; and third, to payment of principal. In the event that this Promissory Note is prepaid in its entirety, this Promissory Note shall be surrendered to Payor for cancellation as a condition to any such prepayment.

1.3 Payment Only on Business Days. Any payment hereunder that, but for this Section 1.3, would be payable on a day that is not a Business Day, shall instead be due and payable on the Business Day next following such date for payment.

2. Events of Default

Each of the following shall constitute an “Event of Default” under this Promissory Note:

(a) failure by Payor to make any payment or prepayment of principal or interest required under this Promissory Note when the same shall become due and payable (whether at maturity, by acceleration or otherwise) and the continuation of such failure for a period of three (3) Business Days following written notice thereof to Payor; or

(b) any representation or warranty made or deemed made herein or in any other Loan Document shall prove to have been inaccurate in any material respect (or, in the case of any representation or warranty that is qualified or

subject to “material adverse effect”, in all respects) on or as of the date made or deemed made or furnished; or

(c) a breach of any covenant or obligation under Section 3.1 or Section 3.2 of this Promissory Note or under any other Loan Document, which breach shall continue uncured for a period of thirty (30) days after the date on which written notice specifying such breach and stating that such notice is a “Notice of Default” hereunder, shall have been given by Payee to Payor; or

(d) (i) Payor shall fail to make any payment on any Material Indebtedness of Payor (other than Indebtedness pursuant to the Loan Documents) when the same becomes due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise), (ii) any other event shall occur or condition shall exist under any agreement or instrument relating to any such Material Indebtedness, if the effect of such event or condition is to accelerate, or to permit the acceleration of, the maturity of such Material Indebtedness (after giving effect to any grace period therefor in such agreement or instrument), or (iii) any such Material Indebtedness shall become or be declared to be due and payable, or required to be prepaid or repurchased (other than by a regularly scheduled required prepayment), prior to the stated maturity thereof; or

(e) one or more judgments or orders (or other similar process) involving, in any single case or in the aggregate, an amount in excess of \$5,000,000 (to the extent not covered by insurance) in the case of a money judgment, shall be rendered against Payor and remain unsatisfied or unstayed for a period of 60 days; or

- (f) Payor pursuant to or within the meaning of any Bankruptcy Law:
 - (i) commences a voluntary case or proceeding;
 - (ii) consents to the entry of an order for relief against it in an involuntary case or proceeding;
 - (iii) consents to the appointment of a Custodian of it or for all or substantially all of its property or assets;
 - (iv) makes a general assignment for the benefit of the creditors;

or

(g) an involuntary case or proceeding is commenced against Payor under any Bankruptcy Law and is not dismissed, bonded or discharged within sixty (60) days thereafter, or a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

- (i) is for relief against Payor in an involuntary case or proceeding;
- (ii) appoints a Custodian of Payor for all or substantially all of its properties or assets; or
- (iii) orders the liquidation of Payor;

and in each case the order or decree remains unstayed and in effect for sixty (60) days.

If an Event of Default specified in Section 2(a) through 2(e) shall have occurred and be continuing, Payee may, at its option, declare the entire principal amount of this Promissory Note and the interest accrued thereon to be due and payable upon the date that is ten (10) Business Days after the date of delivery by Payee to Payor of a written notice of

acceleration, and upon any such declaration the same shall become due and payable at such time. If an Event of Default specified in Section 2(f) or 2(g) hereof occurs, the principal balance of this Promissory Note and the accrued and unpaid interest thereon shall become due and payable immediately without any declaration or other act on the part of Payee.

If any Event of Default shall have occurred and be continuing, Payee may proceed to protect and enforce its rights either by suit in equity or by action at law, or both, whether for specific performance of any provision of this Promissory Note or in aid of the exercise of any power granted to Payee under this Promissory Note or the other Loan Documents.

3. Covenants.

3.1 Affirmative Covenants. Payor covenants and agrees that for so long as any indebtedness evidenced by this Promissory Note shall remain outstanding, unless waived by Payee, Payor shall:

(a) promptly give notice to Payee of any default or Event of Default hereunder upon any senior officer of Payor obtaining knowledge of any such default or Event of Default;

(b) deliver to Payee:

(i) as soon as available but in any event within 30 days after the end of each monthly accounting period in each fiscal year, unaudited consolidated statements of income and cash flows of Payor and its subsidiaries for such monthly period and for the period from the beginning of the fiscal year to the end of such month, and consolidated balance sheets of Payor and its subsidiaries as of the end of such monthly period, all prepared in accordance with United States generally accepted accounting principles, consistently applied ("GAAP"), subject to the

absence of footnote disclosures, normal year-end adjustments and such other departures from GAAP as Payor's board of managers may authorize;

(ii) as soon as available but in any event within 45 days after the end of each quarterly accounting period in each fiscal year, unaudited consolidated statements of income and cash flows of Payor and its subsidiaries for such quarterly period and for the period from the beginning of the fiscal year to the end of such quarter, and consolidated balance sheets of Payor and its subsidiaries as of the end of such quarterly period, all prepared in accordance with GAAP, subject to the absence of footnote disclosures, normal year-end adjustments and such other departures from GAAP as Payor's board of managers may authorize; and

(iii) as soon as available but in any event within 90 days after the end of each fiscal year, consolidated statements of income and cash flows of Payor and its subsidiaries for such fiscal year, and consolidated balance sheets of Payor as of the end of such fiscal year, all prepared in accordance with GAAP and audited by a nationally recognized independent accounting firm.

(c) except as would not have a material adverse effect on the transactions contemplated by this Promissory Note, preserve and maintain its existence and such of its rights, licenses and privileges as are determined by the Payor to be material to the business and operations conducted by it and qualify and remain qualified to do business in each jurisdiction in which such

qualification is, as determined by the Payor, material to its business and operations or ownership of its properties;

(d) keep or cause to be kept, at the principal place of business of Payor, or at such other location as Payor may deem appropriate, full and proper ledgers, other books of account, and records of all material receipts and disbursements, other financial activities, and the internal affairs of Payor;

(e) apply for, obtain and/or maintain in effect, as applicable, all authorizations, consents, approvals, licenses, qualifications, exemptions, filings, declarations and registrations (whether with any court, governmental agency, regulatory authority, securities exchange or otherwise) that are necessary in connection with the execution, delivery and/or performance by Payor of this Promissory Note other than those the failure of which to obtain or maintain would not have a material adverse effect on the transactions contemplated by this Promissory Note; and

(f) maintain insurance coverage on its physical assets and against other business risks in such amounts and of such types as are customarily carried by similar entities similar in size and nature, and in the event of acquisition of additional property, real or personal, or of the incurrence of additional material risks of any nature, increase such insurance coverage in such manner and to such extent as prudent business judgment and present practice would dictate.

(g) with respect to any Subsidiary of the Payor, Payor shall deliver, and shall cause any such Subsidiary to deliver, to the Payee such amendments to the Security Agreement or such other documents as the Payee reasonably deems

necessary (i) to provide a guaranty by any such Subsidiary and (ii) to grant to the Payee a perfected security interest in substantially all of the assets of such Subsidiary, in each case to secure the obligations of the Payor under this Promissory Note subject to customary exceptions and exclusions.

3.2 Negative Covenants. Payor covenants and agrees that for so long as any indebtedness evidenced by this Promissory Note remains outstanding, Payor will not without the written consent of Payee;

(a) consolidate with, or merge with or into, any Person unless (i) Payor shall be the continuing Person, or the Person (if other than Payor) formed by such consolidation or into which Payor is merged shall expressly assume, by an agreement executed and delivered to Payee, in form and substance reasonably satisfactory to Payee, the obligations of Payor under this Promissory Note and (ii) no Event of Default has occurred and is continuing or would occur after giving effect to such consolidation or merger. Upon any consolidation or merger of Payor in accordance with this Section 3.2(a), the successor entity formed by such consolidation or into which Payor is merged shall succeed to, and be substituted for and may exercise any right and power of, Payor under this Promissory Note with the same effect as if such successor entity had been named as Payor herein; or

(b) other than tax distributions described in Section 4.1(b) of the [second] [amended and restated] limited liability company agreement of Payor, make any distribution to its members or shareholders in respect of any of its equity interests; or

(c) create any consensual Lien on any of its assets which Lien secures Indebtedness.

4. Certain Definitions.

“Affiliate” means, as to any Person, any other Person which is controlled by, controls, or is under common control with, such Person

“Bankruptcy Law” means Title 11, United States Code, or any similar federal, state or foreign law for the relief of debtors or any arrangement, reorganization, assignment for the benefit of creditors or any other marshalling of the assets and liabilities of Payor.

“Business Day” means each day other than Saturdays, Sundays and days when commercial banks are authorized or required by law to be closed for business in New York, New York.

“Collateral” means all property and interests in property and proceeds thereof now owned or hereafter acquired by Payor in or upon which a Lien is granted or purported to be granted under any of the Collateral Documents.

“Collateral Documents” means the Security Agreement and any other agreement or instruments that now or hereafter grants a Lien to Payee or its successors and assigns in assets of Payor.

“Custodian” means any receiver, trustee, assignee, liquidator, custodian or similar official under any Bankruptcy Law.

“Event of Default” means any of the occurrences specified under Sections 2 of this Promissory Note.

“Indebtedness” means the principal amount of all indebtedness of Payor with respect to (i) borrowed money, evidenced by debt securities, debentures, acceptances, notes or other similar instruments, (ii) obligations under capital leases (as defined under GAAP on the

date hereof), (iii) reimbursement obligations for letters of credit and financial guarantees (without duplication), (other than ordinary course of business contingent reimbursement obligations), (iv) the deferred purchase price of property or services (except for accounts payable and accrued expenses and receipt of progress and advance payments related to such purchase price, in each case arising in the ordinary course of business), (v) all indebtedness of another Person of the type referred to above that is guaranteed by Payor, or (vi) all indebtedness of the type referred to above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien upon or in property (including Accounts and general intangibles) owned by such Payor, even though Payor has not assumed or become liable for the payment of such Indebtedness.

“Lien” means any lien, mortgage, deed of trust, pledge, or security interest of any kind (including any agreement to give any of the foregoing).

“Loan Documents” means this Note, the Collateral Documents and any other documents or instruments entered into in connection with any of the foregoing

“Material Indebtedness” means Indebtedness of Payor the outstanding principal amount of which individually exceeds \$5,000,000.

“Maturity Date” means [_____], [2016]¹.

“Person” means any individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

“Securities Act” means the Securities Act of 1933, as amended.

¹ To be confirmed.

“Security Agreement” means that certain Security Agreement, dated as of the date hereof and entered into by Payor in favor of Payee.

“Subsidiary” means, as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person.

5. Miscellaneous

5.1 Section Headings. The section headings contained in this Promissory Note are for reference purposes only and shall not affect the meaning or interpretation of this Promissory Note.

5.2 Amendment and Waiver. No provision of this Promissory Note may be amended or waived unless Payor shall have obtained the written agreement of Payee . No failure or delay in exercising any right, power or privilege hereunder shall imply or otherwise operate as a waiver of any rights of Payee, nor shall any single or partial exercise thereof preclude any other or future exercise thereof or the exercise of any other right, power or privilege.

5.3 Successors, Assigns and Transferors. Subject to Section 5.10, this Promissory Note shall not be assignable and transferable by Payee without the prior written consent of the Payor, which consent shall not be required (i) for an assignment or transfer to an Affiliate of the Payee or (ii) during the continuance of an Event of Default. Payor may not assign its obligations under this Promissory Note without the prior written consent of Payee except in connection with a transaction permitted under Section 3.2(a) hereof. Any assignment

of this Promissory Note in violation of the provisions of this Section 5.3 shall be null and void, *ab initio*. Subject to the foregoing, the obligations of Payor and Payee under this Promissory Note shall be binding upon, and inure to the benefit of, and be enforceable by, Payor and Payee, and their respective successors and permitted assigns, whether or not so expressed.

5.4 Governing Law. This Promissory Note shall be governed by, and construed in accordance with, the laws of the State of New York without giving effect to any conflicts of laws principles thereof that would otherwise require the application of the law of any other jurisdiction.

5.5 Lost, Stolen, Destroyed or Mutilated Promissory Note. Upon receipt of evidence reasonably satisfactory to Payor of the loss, theft, destruction or mutilation of this Promissory Note and of indemnity arrangements reasonably satisfactory to Payor from or on behalf of the holder of this Promissory Note, and upon surrender or cancellation of this Promissory Note if mutilated, Payor shall make and deliver a new note of like tenor in lieu of such lost, stolen, destroyed or mutilated Promissory Note, at Payee's expense.

5.6 Waiver of Presentment, Etc. Except as otherwise provided herein, presentment, demand, protest, notice of dishonor and all other notices are hereby expressly waived by Payor.

5.7 Usury. Nothing contained in this Promissory Note shall be deemed to establish or require the payment of a rate of interest in excess of the maximum rate legally enforceable. If the rate of interest called for under this Promissory Note at any time exceeds the maximum rate legally enforceable, the rate of interest required to be paid hereunder shall be automatically reduced to the maximum rate legally enforceable. If such interest rate is so reduced and thereafter the maximum rate legally enforceable is increased, the rate of interest

required to be paid hereunder shall be automatically increased to the lesser of the maximum rate legally enforceable and the rate otherwise provided for in this Promissory Note.

5.8 Notices. Any notice, request, instruction or other document to be given hereunder by either party to the other shall be in writing and shall be deemed given when received and shall be (i) delivered personally or (ii) mailed by certified mail, postage prepaid, return receipt requested or (iii) delivered by Federal Express or a similar overnight courier or (iv) sent via facsimile transmission to the fax number given below, as follows:

If to Payor, addressed to:

With a copy to:

If to Payee, addressed to:

With a copy to:

or to such other place and with such other copies as either party may designate as to itself by written notice to the other party.

In the event that any notice under this Promissory Note is required to be made on or as of a day which is not a Business Day, then such notice shall not be required to be made until the first day thereafter which is a Business Day.

5.9 Representations and Warranties of Payor. Payor hereby represents and warrants to Payee that as of the date hereof:

(a) Payor has been duly formed and is validly existing in good standing as a limited liability company under the laws of the State of Delaware, with all requisite limited liability company power and authority to carry on its business as currently conducted. Payor is duly qualified and authorized to do business in each jurisdiction where the character of its assets or the nature of its activities makes such qualification necessary, except in jurisdictions in which the failure to so qualify would not have a material adverse effect on the transactions contemplated by this Promissory Note;

(b) The execution, delivery and performance by Payor of this Promissory Note are within the limited liability company powers of Payor, have been duly authorized by all necessary limited liability company action, and are not in contravention of law or the terms of Payor's organizational documents or, except as would not have a material adverse effect on the transactions contemplated by this Promissory Note, any material agreement to which Payor is party or by which it is bound. Upon execution by Payor, this Promissory Note constitutes a valid and binding obligation of Payor, and is enforceable against Payor in accordance with its terms;

(c) Payor has not done business under any name other than that specified on its signature page hereto. Payor's chief executive office is located at _____;

(d) The fair saleable value of Payor's assets on the date hereof (including goodwill minus disposition costs) exceeds the fair value of its liabilities and Payor is not left with unreasonably small capital after the transaction contemplated by this Promissory Note;

(e) To Payor's knowledge, there are no material actions, suits, litigation or proceedings, at law or in equity, and no proceedings before any arbitrator or by or before any governmental commission, board, bureau, or other administrative agency, pending, or, threatened against or affecting Payor, that would have a material adverse effect on the transactions contemplated by this Promissory Note;

(f) Payor has materially complied with all applicable laws having material effect over its operations, except as would not have a material adverse effect on the transactions contemplated by this Promissory Note; and

(g) Except as have been previously obtained or as would not have a material adverse effect on the transactions contemplated by this Promissory Note, no authorization, consent, approval, license, qualification or formal exemption from, nor any filing, declaration or registration with, any court, environmental agency or regulatory authority or other governmental body or any securities exchange, is required in connection with the execution, delivery and performance by Payor of this Promissory Note.

5.10 Register.

(a) Payor shall maintain a register (the "Register") in which it shall record (i) the name and address of Payee, (ii) the amount of the loan made

hereunder, (iii) the amount of any principal or interest due and payable or to become due and payable from Payor to Payee hereunder and (iv) any amount paid by Payor to Payee hereunder.

(b) The entries made in the accounts maintained pursuant to Section 5.10(a) shall be prima facie evidence of the existence and amounts of the obligations recorded therein; provided that the failure of Payor to maintain such accounts or any error therein shall not in any manner affect the obligation of Payor to repay the loans made hereunder in accordance with the terms of this Promissory Note. Payor and Payee shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Payee hereunder for all purposes of this Promissory Note, notwithstanding notice to the contrary. The Register shall be available for inspection by Payee at any reasonable time and from time to time upon reasonable prior notice. This Section 5.10 shall be construed so that the loans made hereunder are at all times maintained in “registered form” within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Internal Revenue Code of 1986, as amended.

IN WITNESS WHEREOF, Payor has executed and delivered this Promissory

Note as of the date hereinabove first written.

MERLIN MEDIA, LLC

By: _____

Name:

Title: