SUNAIR SERVICES CORP
Form DEF 14C
January 06, 2006

SCHEDULE 14C
(Rule 14a-101)
INFORMATION REQUIRED IN INFORMATION STATEMENT
SCHEDULE 14C INFORMATION
Information Statement Pursuant to Section 14(c)
of the Securities Exchange Act of 1934

Check the appropriate box:

o Preliminary information statement

o Confidential, For Use of the Commission only (as permitted by Rule 14c-5(d)(2))

x Definitive information statement

SUNAIR SERVICES CORPORATION

(Name of Registrant as Specified in Its Charter)

Payment of filing fee (Check the appropriate box):

x No fee required.

o Fee computed on the table below per Exchange Act Rules 14c-5(g) 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:

o Fee paid previously with preliminary materials.

o Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

(1) Amount previously paid:

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

(3) Filing Party:

(4) Date Filed:

SUNAIR SERVICES CORPORATION
3005 S.W. THIRD AVENUE
FT. LAUDERDALE, FL 33315
NOTICE OF ACTION BY A MAJORITY OF THE SHAREHOLDERS

To Our Shareholders:

We plan to sell a total of 2,857,146 shares of our common stock at a price of $5.25 per share and warrants to purchase 1,000,000 shares of our common stock at an exercise price of $6.30 (subject to adjustment) in a private placement to be completed in two tranches. We completed the first-tranche of the private placement on December 16, 2005, when we sold a total of 2,000,003 shares of our common stock and warrants to purchase a total of 700,000 shares of our common stock to investors. In the second-tranche, which is expected to be completed on the twentieth calendar day after this Notice of Action by a Majority of the Shareholders (Notice) and the accompanying Information Statement is sent to our shareholders, we expect to sell an additional 857,143 shares of our common stock and warrants to purchase 300,000 shares of our common stock to the investors. We expect to receive aggregate proceeds from the private placement, before expenses to us, of approximately $15 million and net proceeds to us of approximately $13.8 million.

We are delivering this Notice and the accompanying Information Statement to inform our shareholders that the holders of a majority of the outstanding shares of our common stock have approved, by written consent, the issuance and sale of the shares of common stock and warrants to purchase common stock in the second-tranche of the private placement. The shareholders have taken this action solely for the purposes of satisfying the rules of the American Stock Exchange that require an issuer of listed securities to obtain prior shareholder approval if it sells or issues common stock equal to 20% or more of the common stock outstanding before the issuance for less than the greater of book or market value of the common stock.

The action by written consent of a majority of the shareholders approving the second-tranche of the private placement was taken in accordance with Section 607.0704 of the Florida Business Corporation Act, which permits any action that may be taken at a meeting of the shareholders to be taken by the written consent to the action by the holders of the number of shares of voting stock required to approve the action at a meeting. All necessary corporate approvals in connection with the matters referred to in this Notice and the accompanying Information Statement have been obtained.

The Information Statement is being furnished to our shareholders pursuant to Section 14(c) of the Securities and Exchange Act of 1934 (Exchange Act) and the rules thereunder solely for the purpose of informing our shareholders of these corporate actions before they take effect. In accordance with Rule 14c-2 under the Exchange Act, the shareholder written consent will not become effective until at least twenty calendar days following the mailing of this Notice and the accompanying Information Statement.

The action has been approved by our board of directors and the holders of more than a majority of shares of our common stock outstanding.

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

You have the right to receive this Notice and the accompanying Information Statement if you were a shareholder of record of our company at the close of business on December 22, 2005.

By order of the board of directors

/s/ SYNNOTT B. DURHAM
Synnott B. Durham
Secretary and Chief Financial Officer

Fort Lauderdale, FL
January 6, 2006

WE ARE NOT ASKING YOU FOR A PROXY
AND YOU ARE REQUESTED NOT TO SEND US A PROXY
SUNAIR SERVICES CORPORATION
3005 S.W. THIRD AVENUE
FT. LAUDERDALE, FL 33315
INFORMATION STATEMENT

This Information Statement is being sent to advise our shareholders of an action to be taken without a meeting upon the written consent of the holders of a majority of the outstanding shares of our common stock. The matter upon which action is to be taken is the issuance and sale, in the second closing of our two-tranche private placement, to certain investors of 857,143 shares of our common stock at a price of $5.25 per share and warrants to purchase 300,000 shares of our common stock. The warrants have an exercise price of $6.30 (subject to adjustment), are exercisable beginning six months after the date of issuance and have a term of five years.

The date on which the action is to be taken is expected to be twenty calendar days after we send this Information Statement to our shareholders. You have the right to receive the enclosed Notice and this Information Statement if you were a shareholder of record of our company at the close of business on December 22, 2005. In accordance with Rule 14c-2 under the Exchange Act, the shareholder written consent will not become effective until at least twenty calendar days following the mailing of the enclosed Notice and this Information Statement.

The following shareholders, who together constitute the holders of a majority of our outstanding shares of common stock (collectively, the Majority Shareholders), have executed a written consent approving the issuance of shares of our common stock as described herein. The shareholders constituting the Majority Shareholders are Coconut Palm Capital Investors II, Ltd. and Michael D. Herman, who together hold 57.8% of our outstanding common stock. As of the date of this Information Statement, there were 12,186,380 shares of our common stock outstanding, which includes 2,000,003 shares of our common stock issued and sold in the first-tranche of the private placement.

This Information Statement is being sent to our shareholders on or about January 6, 2006. This Information Statement constitutes notice to our shareholders of corporate action taken by our shareholders without a meeting as required by the Florida Business Corporation Act.

We will pay the costs of preparing and sending out the enclosed Notice and this Information Statement.

The Florida Business Corporation Act does not provide for dissenter s rights in connection with the action being taken.

The date of this Information Statement is January 6, 2006.

ISSUANCE OF SECURITIES

Introduction

On December 16, 2005, we completed the first-tranche of a two-tranche sale of our securities to investors in a private placement pursuant to purchase agreements, dated December 15, 2005, by and among us and the investors named therein (the Purchase Agreements). Pursuant to the Purchase Agreements, we agreed to sell up to an aggregate of 2,857,146 shares of our common stock at a price per share of $5.25 and warrants to purchase 1,000,000 shares of our common stock (the Private Placement) at an exercise price of $6.30 (subject to adjustment) with total gross proceeds (before fees and expenses) to us of approximately $15 million and net proceeds to us of approximately $13.8 million.

The sale and issuance of our common stock has been structured to close in two tranches. The first closing was completed on December 16, 2005, pursuant to which we issued and sold an aggregate of 2,000,003 shares of our common stock and warrants to purchase 700,000 shares of our common stock (the First Closing). In the second closing, which is expected to occur on the twentieth calendar day after this Information Statement is sent to our shareholders, we expect to sell an additional 857,143 shares of our common stock and warrants to purchase 300,000 shares of our common stock (the Second Closing). In this Information Statement, we refer to the common stock and warrants to be issued at the Second Closing as the Securities.

The investors have deposited an aggregate of $4.5 million, representing the consideration to be paid for the Securities to be issued at the Second Closing, in an escrow fund, which will be released to us at the Second Closing. We expect to receive gross proceeds (before fees and expenses) of approximately $4.5 million and net proceeds to us of approximately $4.1 million at the Second Closing.

In connection with the Private Placement, the Majority Shareholders, who hold in excess of 50% of our issued and outstanding shares of common stock, have executed their written consent approving the issuance and sale of the Securities at the Second Closing. The shareholder approval of the issuance of the Securities at the Second Closing includes approval of additional shares that may become issuable as a result of the anti-dilution provisions in the warrants.

THIS INFORMATION STATEMENT IS NEITHER AN OFFER TO SELL NOR A SOLICITATION OF AN OFFER TO BUY ANY SECURITIES OF OUR COMPANY. THE SECURITIES REFERRED TO IN THIS INFORMATION STATEMENT HAVE NOT BEEN REGISTERED FOR SALE BY US UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE SECURITIES ACT), OR ANY STATE SECURITIES LAWS AND MAY NOT BE SO OFFERED OR SOLD ABSENT SUCH REGISTRATION UNDER THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS OR AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS THEREOF.

The investors in the Private Placement consist of a limited number of accredited investors, and the sale of our common stock and warrants will be made in reliance on Regulation D promulgated under the Securities Act, which offers exemptions from the registration requirements under the Securities Act. Roth Capital Partners, LLC is serving as the placement agent for us in connection with the Private Placement.

Reason for Shareholder Approval

We are subject to the rules of the American Stock Exchange (AMEX) because our common stock is listed on the AMEX. These rules require us to obtain shareholder approval for any issuance or sale of common stock, or securities convertible into or exercisable for common stock, that is (i) equal to 20% or more of our outstanding common stock before such issuance or sale and (ii) at a price per share below the greater of book or market value at the time of such issuance or sale. Because the warrants will not be exercisable until six months after they are issued and the exercise price of the warrants is equal to or greater than the market value on the date the Purchase Agreements were entered into, the warrants do not need to be included in the calculation of the 20%. The AMEX rules apply to the Second Closing because:

the shares of common stock that we issued and sold at the First Closing comprised approximately 19.6% of the shares of our common stock outstanding immediately prior to the First Closing. The shares of common stock we intend to issue and sell at the Second Closing, together with the shares issued and sold in the First Closing, will comprise approximately 28% of the shares of our common stock outstanding immediately prior to the First Closing and approximately 21.9% of the outstanding shares immediately after the Second Closing, and

the purchase price of the common stock we issued and sold at the First Closing and intend to issue and sell at the Second Closing will be at $5.25 per share, which is below $5.60 per share, the closing price of our common stock on the AMEX on December 15, 2005, the date the Purchase Agreements were entered into.

For the above reasons, we are required under the AMEX rules to obtain shareholder approval prior to issuing and selling the Securities at the Second Closing. We were not required to obtain shareholder approval for the issuance and sale of the shares of common stock and warrants issued at the First Closing.

Effects of the Private Placement

The Private Placement will result in a significant increase in the number of shares of our common stock outstanding, and, as a result, current shareholders who are not participating in the Private Placement would own a smaller percentage of our outstanding common stock and, accordingly, a smaller percentage interest in the voting power, liquidation value and book value of our company. The sale or resale of any of our common stock issued pursuant to the Private Placement could cause the market price of our common stock to decline.

Our shareholders will incur dilution of their percentage of stock ownership in us if the Second Closing occurs. Immediately following the First Closing, 12,186,380 shares of our common stock were outstanding after giving effect to the issuance of 2,000,003 shares of our common stock at the First Closing. If the Second Closing occurs (assuming no issuance of any shares between the First Closing and the Second Closing), a total of 13,043,523 shares of our common stock will be outstanding. Further, upon exercise of the warrants, an additional 1,000,000 shares will be outstanding, which will cause further dilution. In addition, the warrants contain certain anti-dilution provisions that if triggered, would cause a decrease in the exercise price of the warrants and would result in more shares of common stock being issuable upon exercise of the warrants. The shareholder approval of the issuance of the Securities at the Second Closing includes approval of the additional shares that may become issuable as a result of the anti-dilution provisions in the warrants.

Reasons for the Private Placement

On February 8, 2005, we closed a transaction with Coconut Palm Capital Investors II, Ltd. (Coconut Palm), which we entered into on November 17, 2004. Coconut Palm purchased from us 5,000,000 Units for an aggregate purchase price of $25 million. Each Unit consisted of (i) one share of our common stock, (ii) one warrant to purchase one share of our common stock at an exercise price of $6.00 per share with a term of three years and (iii) one warrant to purchase one share of our common stock at an exercise price of $7.00 per share with a term of five years. In connection with the investment by Coconut Palm, we formed a new Lawn and Pest Control Services division for future acquisitions.

The Lawn and Pest Control Services division acquired its first company on June 7, 2005, through the acquisition by our subsidiary, Sunair Southeast Pest Holdings, Inc., of all of the outstanding capital stock of Middleton Pest Control, Inc., a Florida corporation (Middleton). The aggregate purchase price for the outstanding capital stock of Middleton was $50 million, which was comprised of: (i) $35.0 million in cash; (ii) $5.0 million in the form of a subordinated promissory note; and (iii)1,028,807 shares of our common stock.

We plan to use the proceeds from the sale of our common stock in the Private Placement and the exercise of the warrants, if any, for working capital and general corporate purposes and additional acquisitions in the Lawn and Pest Control Services division. We plan initially to focus on acquisitions in the southeastern United States including Alabama, Georgia, Louisiana, Mississippi and Florida, but will consider additional super regional acquisitions in other geographic areas. Ultimately, we anticipate that with the growth of our new Lawn and Pest Control Services division, we no longer will operate solely through our traditional business segment. Furthermore, as we are able to grow our Lawn and Pest Control Services division through acquisitions and, eventually through

internal organic growth, we contemplate that this new division will become our dominant operation. Accordingly, if we are successful in implementing this strategy, it will represent a fundamental shift in the nature of our business.

In furtherance of this strategy, on December 16, 2005, Middleton used a portion of the proceeds from the Private Placement to acquire Spa Creek Services, LLC d/b/a Pest Environmental, a pest control and termite services company located in Central Florida for a preliminary purchase price of approximately $5.5 million in cash.

Our board of directors has determined that obtaining additional funds pursuant to the Private Placement is critical to our company s ability to execute on its current business plan to grow the new Lawn and Pest Control Services division through acquisitions of companies in the lawn and pest control services sector and through internal growth. However, because of the restrictions of AMEX rules, we are limited in the amount we may raise through the private sale of our equity securities without obtaining shareholder approval. If the conditions to the Second Closing of the Private Placement are satisfied, we will raise up to $15 million in the Private Placement, including approximately $4.5 million in gross proceeds at the Second Closing.

Summary of the Purchase Agreements

The material terms of the Purchase Agreements are summarized below. A copy of the form of Purchase Agreement was filed by us as an exhibit to the Current Report on Form 8-K, filed with the Securities and Exchange Commission (the SEC) on December 21, 2005, and is attached to this Information Statement as Annex A. You are encouraged to review the full text of the form of Purchase Agreement. The following summary is qualified in its entirety by reference to the more detailed terms set forth in the Purchase Agreements.

Conditions to Consummating the Second Closing

Under the terms of the Purchase Agreements, the investors obligation to consummate the Second Closing is subject to the following material conditions:

- the Second Closing occurs on or before the 45 th day following the First Closing;
- our representations and warranties set forth in the Purchase Agreements are accurate in all material respects as of the Second Closing date;
- we have filed with the SEC and mailed to our shareholders this Information Statement at least 20 days before the Second Closing date;
- there has been no material adverse change affecting us, our financial condition or results of operations; and
- the sale of our common stock in the Second Closing is not prohibited by any law or governmental order or regulation.

Our obligation to consummate the Second Closing is subject to the following material conditions:

- receipt of funds for the purchase price;
- the investors representations and warranties set forth in the Purchase Agreements are accurate in all material respects as of the Second Closing date;
- the sale of our common stock in the Second Closing is not prohibited by any law or governmental order or regulation;
- our shareholders have approved the issuance and sale of the shares of our common stock to the investors at the Second Closing; and
- we have sold to investors in the Private Placement common stock and warrants for a minimum of $11 million (which condition may be waived).

Preemptive Rights

Each of the investors in the Private Placement has been granted a preemptive right to purchase its pro rata share of certain equity securities that we may issue for a period of two years from the date of the Purchase Agreements. The investors will have the right to purchase the lesser of:

the number of shares of common stock or securities convertible into common stock in the new financing that could be purchased for the aggregate purchase price paid for the shares of common stock and warrants in the Private Placement; or

20% of the number of shares of common stock and securities convertible into common stock issued in the new financing.

These preemptive rights do not apply to certain types of offerings (the Excluded Securities), including the following:

securities issued to strategic investors of ours;

shares of common stock issuable upon exercise of stock options under our employee stock option plan or other employee, board, or consultant incentive plans or agreements approved by our board of directors or a compensation committee of our board of directors;

securities issued upon the conversion of convertible securities outstanding as of the applicable closing date; and

common stock issued in connection with any business combination.

Registration Rights

Pursuant to the Purchase Agreements, we agreed to use our best efforts to prepare and file a registration statement on Form S-3 (the Registration Statement) for the resale of the shares of our common stock and the shares issuable upon exercise of the warrants issued pursuant to the Purchase Agreements (the Registrable Shares) within 5 days following the Second Closing, but in no event later than 45 days following the First Closing, and to use our best efforts to cause the Registration Statement to become effective within 45 days following the Second Closing or within 75 days following the Second Closing if the Registration Statement is reviewed by the SEC. We also agreed to make such filings as necessary to keep the Registration Statement effective until such time as the Registrable Shares may be resold pursuant to Rule 144(k), or two years after the effective date of the Registration Statement.

We are entitled to suspend the effectiveness of the Registration Statement for no more than 30 days on two occasions in any 12 month period. In the event we fail to cause the Registration Statement to be timely filed, timely declared effective, or to be kept effective (other than pursuant to the permissible suspension periods), we agreed to pay as liquidated damages the amount of 0.0667% per day of the aggregate amount invested by each investor in the Private Placement.

Summary of the Warrants

The material terms of the warrants are summarized below. A copy of the form of warrant was filed by us as an exhibit to the Current Report on Form 8-K, filed with the SEC on December 21, 2005, and is attached to this Information Statement as Annex B. You are encouraged to review the full text of the form of warrant. The following summary is qualified in its entirety by reference to the more detailed terms set forth in the warrant.

Exercise Period

Each of the warrants to be issued in the Private Placement will be exercisable beginning six months from the date of issuance and will have a term of five years.

Exercise Price, Adjustment to Exercise Price and Number of Shares

The exercise price of the warrants is initially $6.30 per share. The exercise price of and the number of shares issuable under the warrants are subject to customary adjustments in certain events, including reclassification of our securities, certain mergers, consolidations, sales of substantially all of our assets, subdivision or combination of our shares, stock dividends and other distributions by us. In addition, the exercise price will be reduced, and the number of shares issuable under the warrants will be increased, if, at any time prior to the one year anniversary of the date of issuance, we issue or sell shares of our common stock, or securities convertible into our common stock (other than Excluded Securities), at a price less than the exercise price in effect at the time of the issuance or sale.

Further, if, at any time after the one year anniversary of the date of issuance, we issue or sell shares of our common stock, or securities convertible into our common stock (other than Excluded Securities), at a price less than the exercise price in effect at the time of issuance or sale, then the exercise price shall be reduced subject to an adjusted weighted-average exercise price calculated by dividing (i) the product of the outstanding shares of common stock times the current exercise price plus the aggregate consideration received for the additional securities, by (ii) the product of the outstanding shares of common stock plus the amount of additional securities.

In no event shall the adjusted exercise price be (1) greater than the original exercise price or (2) less than $5.60, which was the market price of our common stock on the date the Purchase Agreements were entered into, until the shareholder consent approving the issuance of the Securities becomes effective.

SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following table sets forth as of December 22, 2005 (or such other date indicated in the footnotes below) the number and percentage of shares beneficially owned before giving effect to the securities to be issued in the Second Closing by the following: (i) each person known to us to own beneficially more than 5 percent of the outstanding shares of our common stock; (ii) each of our current directors; (iii) each of our executive officers who had an annual salary and bonus for fiscal 2005 in excess of $100,000 and our President and Chief Executive Officer; and (iv) all of our directors and executive officers as a group.

Name[1]	**Number of Shares Beneficially Owned**[2]	**Percent of Common Stock**
Coconut Palm Capital Investors II, Ltd. 595 South Federal Highway Suite 600, Boca Raton, FL 33342[3]	14,995,900	67.6%
Michael Brauser 595 S. Federal Highway Boca Raton, FL 33432[4]	1,200,000	9.4%
Trustman c/o STI Classic Small Cap Growth Fund c/o: Trusco Capital Management, Inc. 50 Hurt Plaza, #1400 Atlanta, GA 30303[5]	1,000,000	8.2%
Joseph S. DiMartino	0	*
Mario B. Ferrari[6]	14,995,900	67.6%
Arnold Heggestad, Ph.D.[7]	28,000	*
Michael D. Herman	2,056,700	16.9%
James E. Laurent[8]	57,663	*
Steven P. Oppenheim[9]	20,000	*
Richard C. Rochon[6]	14,995,900	67.6%
Charles P. Steinmetz	411,524	3.4%
Gregory A. Clendenin[10]	205,761	1.7%
Synnott B. Durham[11]	38,658	*
John J. Hayes[12]	623,266	4.9%
All directors and executive officers as a group (11 persons) [13]	18,437,472	80.5%

* Less than 1%.

(1) Except as otherwise indicated, the address of each person named in this table is c/o Sunair Services Corporation, 3005 S.W. Third Avenue, Fort Lauderdale, Florida 33315.

(2) In determining the number and percentage of shares beneficially owned by each person, shares that may be acquired by such person pursuant to options or warrants exercisable within 60 days after December 22, 2005 are deemed outstanding for purposes of determining the total number of outstanding shares for such person and are not deemed outstanding for such purpose for all other shareholders. To our knowledge, except as otherwise indicated, beneficial

ownership includes sole voting and dispositive power with respect to all shares owned by them.

(3) Consists of 4,995,900 shares of our common stock and 10,000,000 shares of our common stock underlying warrants issued to Coconut Palm that are immediately exercisable. Coconut Palm has the sole power to dispose of 13,430,000 shares of common stock beneficially owned by it. Coconut Palm has the sole power to vote, or to direct the vote of, 14,995,900 shares of Common Stock. 1,565,900 of the 14,995,900 shares of our common stock consist of an aggregate of 780,900 shares of common stock and 785,000 shares underlying warrants that are immediately exercisable, which Coconut Palm has the sole power to vote pursuant to proxy agreements that

were executed by certain limited partners of Coconut Palm upon their redemption of their limited partnership interests for shares of our common stock and warrants to purchase shares of our common stock beneficially owned by Coconut Palm. Richard C. Rochon, Chairman of our Board of Directors, and Mario B. Ferrari, Vice Chairman of our Board of Directors, are the natural persons who exercise voting and investment control over the shares.

(4) Mr. Brauser acquired such shares upon the redemption of his limited partnership interests in Coconut Palm and has granted Coconut Palm the sole power to vote such shares pursuant to a proxy agreement. Includes

600,000 shares underlying warrants that are immediately exercisable.

(5) Includes 300,000 shares of common stock that Trustman has the right (and obligation) to acquire at the Second Closing pursuant to a Purchase Agreement, because satisfaction of the only material condition to such acquisition, the approval of the issuance of such shares by our shareholders, has been obtained. Mark Garfinkel exercises voting and dispositive power over such shares.

(6) Shares consist of all shares beneficially owned by Coconut Palm. Assumes beneficial ownership of such shares is attributed to Messrs. Rochon and Ferrari. Messrs. Rochon and Ferrari disclaim

beneficial ownership of these shares.

(7) Includes 20,000 shares issuable upon exercise of options that are exercisable within 60 days after December 22, 2005.

(8) Includes 21,658 shares issuable upon exercise of options that are exercisable within 60 days after December 22, 2005.

(9) Consists of 20,000 shares issuable upon exercise of options that are exercisable within 60 days after December 22, 2005.

(10) The shares are held by The Gregory A. Clendenin Trust, of which Mr. Clendenin is the trustee.

(11) Includes 21,658 shares issuable upon exercise of options that are exercisable within 60 days after December 22,

2005.

(12) Includes 41,666 shares issuable upon exercise of options that are exercisable within 60 days after December 22, 2005. Also includes 290,800 shares of our common stock and 290,800 shares underlying warrants that Mr. Hayes has the immediate right to acquire as a limited partner of Coconut Palm. Upon his acquisition of the shares that Mr. Hayes has the right to acquire as a limited partner of Coconut Palm, Coconut Palm will have the sole power to vote such shares. Mr. Hayes began serving as our President and Chief Executive Officer in February, 2005.

(13) Includes 10,706,582 shares issuable upon exercise of options and warrants that are immediately exercisable or are exercisable within 60 days after December 22, 2005.

By Order of the board of directors

/s/ SYNNOTT B. DURHAM
Synnott B. Durham
Secretary and Chief Financial Officer

Fort Lauderdale, FL
January 6, 2006

ANNEX A
FORM OF PURCHASE AGREEMENT

PURCHASE AGREEMENT

THIS AGREEMENT (this Agreement) is made as of the ___ day of December 2005, by and between Sunair Services Corporation (formerly known as Sunair Electronics, Inc.) (the Company), a corporation organized under the laws of the State of Florida, with its principal offices at 3005 SW Third Avenue, Fort Lauderdale, Florida 33315, and the purchaser whose name and address is set forth on the signature page hereof (the Purchaser). As used herein, the term Placement Agent shall mean Roth Capital Partners, LLC.

IN CONSIDERATION of the mutual covenants contained in this Agreement, the Company and the Purchaser agree as follows:

SECTION 1. Authorization of Sale of the Securities. Subject to the terms and conditions of this Agreement, the Company has authorized, subject to the Company obtaining Stockholder Approval (as defined herein), the issuance and sale to the Purchaser pursuant to this Agreement, in two tranches, an Initial Closing and a Second Closing (as such terms are defined in Sections 3.2 and 3.3, respectively), of shares of Common Stock, par value $0.10 per share (the Common Stock), of the Company, and warrants (the Warrants) to purchase shares of Common Stock of the Company. The shares of Common Stock and Warrants (including the underlying shares of Common Stock) to be issued and sold by the Company to the Purchaser pursuant to this Agreement at the Initial Closing are referred to herein as the Initial Securities and shall in no event exceed an amount equal to 19.9% of the Company s issued and outstanding Common Stock as of the Initial Closing. The shares of Common Stock and Warrants (including the underlying shares of Common Stock) to be issued and sold to the Purchaser pursuant to this Agreement at the Second Closing are referred to herein as the Additional Securities . The Initial Securities and the Additional Securities, together with those additional shares of Common Stock issued to the Purchaser pursuant to Section 8 hereof (the Anti-Dilution Shares), are referred to herein as the Securities . One share of Common Stock and the accompanying one Warrant shall also be referred to as a Unit .

SECTION 2. Agreement to Sell and Purchase the Securities. At each Closing (as defined in Section 3), the Company will issue and sell to the Purchaser, and the Purchaser will buy from the Company, upon the terms and subject to the conditions hereinafter set forth, the aggregate number of shares of Common Stock and Warrants at a purchase price of $5.25 per Unit.

SECTION 3. Delivery of the Securities at the Closings.

3.1 Location of the Closings. The Initial Closing (as defined below) and the Second Closing (as defined below) shall occur at the offices of Lowenstein Sandler PC, 1251 Avenue of the Americas, New York, New York 10020.

3.2 The Initial Closing. The completion of the purchase and sale of the Initial Securities (the Initial Closing) shall occur as soon as practicable and as agreed to by the parties hereto within, but not more than, three (3) business days following the execution of this

Agreement, or on such later date or at such different location as the parties shall agree in writing, but not prior to the date that all of the conditions precedent to the Initial Closing set forth in Section 3.5(a) below have been satisfied or waived by the appropriate party (the Initial Closing Date). The Initial Closing shall occur at a time to be agreed upon by the Company and the Placement Agent and of which the Purchaser will be notified by facsimile transmission or otherwise.

3.3 The Second Closing. The completion of the purchase and sale of the Additional Securities (the Second Closing) shall occur as soon as practicable, but not more than three (3) business days following the date on which all of the conditions relevant to the Second Closing set forth in Section 3.5(b) below have been satisfied or waived by the appropriate party but no later than 45 days after the Initial Closing Date or such later date or at such different location as the Company and the Purchaser shall agree in writing (the Second Closing Date). The Second Closing shall occur at a time to be agreed upon by the Company and the Placement Agent and of which the Purchaser will be notified by facsimile transmission or otherwise.

3.4 Actions to be Taken Prior to, and at, each Closing. (a) At the Initial Closing, the Company shall deliver to the Purchaser one or more certificates registered in the name of the Purchaser, or, if so indicated on the Securities Certificate Questionnaire attached hereto as Appendix II, in such nominee name(s) as designated by the Purchaser, representing the number of shares of Common Stock and Warrants to be purchased by the Purchaser at the Initial Closing, each bearing an appropriate legend referring to the fact that the Initial Securities were sold in reliance upon the exemption from registration under the Securities Act of 1933, as amended (the Securities Act) provided by Section 4(2) thereof and Rule 506 thereunder. The name(s) in which the certificates are to be registered are set forth in the Securities Certificate Questionnaire attached hereto as Appendix II.

(b) At the Second Closing, the Company shall deliver to the Purchaser one or more certificates registered in the name of the Purchaser, or, if so indicated on the Securities Certificate Questionnaire attached hereto as Appendix II, in such nominee name(s) as designated by the Purchaser, representing the number of shares of Common Stock and Warrants to be purchased by such Purchaser at the Second Closing, each bearing an appropriate legend referring to the fact that the Additional Securities were sold in reliance upon the exemption from registration under the Securities Act provided by Section 4(2) thereof and Rule 506 thereunder. The name(s) in which the certificates are to be registered are set forth in the Securities Certificate Questionnaire attached hereto as Appendix II.

3.5 Conditions Precedent to each Closing. (a) The Initial Closing. The Company s obligation to complete the purchase and sale of the Initial Securities and deliver certificates representing the Initial Securities to the Purchaser at the Initial Closing shall be subject to the following conditions, any one or more of which may be waived by the Company: (i) receipt by the Company of same-day funds in the full amount of the purchase price for the Initial Securities being purchased hereunder; (ii) simultaneously with, or prior to, the Initial Closing, the Company shall have sold shares of Common Stock and Warrants to third party purchasers, who are not acting in concert with the Purchaser, for an aggregate minimum of $11 million, which shares of Common Stock and Warrants shall be sold to such third party

purchasers on the same terms and conditions as are set forth herein; (iii) the sale of the Initial Securities shall not be prohibited by any law or governmental law or governmental order or regulation, including the American Stock Exchange; and (iv) the accuracy in all material respects of the representations and warranties made by the Purchaser (as if such representations and warranties were made on the Initial Closing Date) and the fulfillment of those undertakings of the Purchaser to be fulfilled prior to the Initial Closing. The Purchaser s obligation to accept delivery of such certificates and to pay for the Initial Securities evidenced thereby shall be subject to the following conditions, any one or more of which may be waived by the Placement Agent after consultation with the Purchaser: (i) the accuracy in all material respects of the representations and warranties of the Company made herein as of the Initial Closing Date; (ii) the delivery to the Purchaser by counsel to the Company of a legal opinion in form and substance reasonably satisfactory to counsel to the Placement Agent; (iii) the execution of those certain Lock-up Agreements attached hereto as Exhibits C-1 and C-2, (iv) the fulfillment in all material respects of those undertakings of the Company to be fulfilled prior to the Initial Closing; and (v) simultaneously with the Initial Closing, the Company shall have sold shares of Common Stock and Warrants to third party purchasers, who are not acting in concert with the Purchaser, for an aggregate minimum of $11 million, which shares of Common Stock and Warrants shall be sold to such third party purchasers on the same terms and conditions as are set forth herein.

(b) The Second Closing. The Company s obligation to complete the purchase and sale of the Additional Securities and deliver certificates representing such securities to the Purchaser at the Second Closing shall be subject to the following conditions, any one of which may be waived by the Company: (i) receipt by the Company of same-day funds in the full amount of the purchase price for the Additional Securities being purchased hereunder; (ii) the accuracy in all material respects of the representations and warranties made by the Purchaser (as if such representations and warranties were made on the Second Closing Date) and the fulfillment of those undertakings of the Purchaser to be fulfilled prior to the Second Closing; (iii) the sale of the Additional Securities shall not be prohibited by any law or governmental law or governmental order or regulation; (iv) the Company shall have obtained the requisite stockholder approval via written consent (the Stockholder Approval) for the issuance of the Additional Securities at the Second Closing (together with the Initial Securities) and the Anti-Dilution Shares in a manner that complies with Section 705 of the American Stock Exchange Company Guide and all other relevant rules and regulations of the American Stock Exchange; and (v) simultaneously with, or prior to, the Second Closing, the Company shall have sold shares of Common Stock and Warrants to third party purchasers, who are not acting in concert with the Purchaser, for an aggregate minimum of $11 million, which shares of Common Stock and Warrants shall be sold to such third party purchasers on the same terms and conditions as are set forth herein. The Purchaser s obligation to accept delivery of such certificates and to pay for the Additional Securities evidenced thereby shall be subject to the following conditions, any one or more of which may be waived by the Placement Agent after consultation with the Purchaser: (i) the Company shall have scheduled the Second Closing for a date on or prior to the 45th day following the Initial Closing Date; (ii) each of the representations and warranties of the Company made herein shall be accurate in all material respects as of the Second Closing Date; (iii) the delivery to the Purchaser by counsel to the Company of a legal opinion in a form and substance reasonably satisfactory to counsel to the Placement Agent; (iv) the Company shall have filed with the Securities and Exchange Commission (the Commission) (x) a preliminary information statement at least 11 calendar days prior to the date on which the definitive Information

Statement (as defined below) was mailed to security holders and (y) a definitive information statement (the Information Statement) at least 20 calendar days prior to the Second Closing Date; (v) the absence of any material adverse change affecting the Company, its financial condition or its results of operations; (vi) the sale of the Additional Securities shall not be prohibited by any law or governmental order or regulation; (vii) the fulfillment in all material respects of those undertakings of the Company to be fulfilled prior to the Second Closing and (viii) simultaneously with, or prior to, the Second Closing, the Company shall have sold shares of Common Stock and Warrants to third party purchasers, who are not acting in concert with the Purchaser, for an aggregate minimum of $11 million, which shares of Common Stock and Warrants shall be sold to such third party purchasers on the same terms and conditions as are set forth herein.

3.6 Escrow of Purchase Price.

3.6.1 Simultaneously with the execution and delivery of a counterpart to this Agreement by the Purchaser, such Purchaser shall promptly cause a wire transfer of immediately available funds (U.S. dollars) in an amount representing such Purchaser s Aggregate Purchase Price , as set forth on such Purchaser s signature page, to be paid to the non-interest bearing escrow account of Lowenstein Sandler PC, the Placement Agent s counsel (Placement Agent s Counsel), set forth on Appendix I hereto (the aggregate amounts being held in escrow are referred to herein as the Escrow Amount). Placement Agent s Counsel shall hold the Escrow Amount in escrow until (i) Placement Agent s Counsel receives written instructions from the Company and the Placement Agent authorizing the release of the Escrow Amount; (ii) Placement Agent s Counsel receives written instructions from the Company and/or the Purchaser that the Agreement has been terminated in accordance with Section 21 in which case Placement Agent s Counsel shall return to the Purchaser the portion of the Escrow Amount such Purchaser delivered to the Placement Agent s Counsel; or (iii) ninety (90) days after the date of this Agreement in which case Placement Agent s Counsel shall return to such Purchaser the portion of the Escrow Amount such Purchaser delivered to the Placement Agent s Counsel. The Company hereby authorizes the Placement Agent s Counsel to release from the Escrow Amount, at the Initial Closing and the Second Closing, without further action or deed (other than receipt of the written instructions from the Company and the Placement Agent authorizing the release of the Escrow Amount), the (i) the cash commission (the Placement Fee) to be paid to the Placement Agent pursuant to the terms of the agreement between the Company and the Placement Agent; and (ii) the Escrow Amount less the Placement Fee to the Company.

3.6.2. The Company and the Purchaser acknowledge and agree for the benefit of Placement Agent s Counsel (which shall be deemed to be a third party beneficiary of this Section 3.6) as follows:

(a) Placement Agent s Counsel (i) is not responsible for the performance by the Company or the Purchaser of this Agreement or the Warrant or for determining or compelling compliance therewith; (ii) is only responsible for (A) holding the Escrow Amount in escrow pending receipt of written instructions from the Placement Agent and the Company directing the release of the Escrow Amount in accordance with Section 3.6.1, (B) disbursing the Escrow Amount in accordance with the written instructions from the Company and/or the Purchaser in accordance with Section 3.6.1 or (C) disbursing the Escrow Amount to

such Purchaser 90 days following the date of this Agreement, each of the responsibilities of Placement Agent s Counsel in clauses (A), (B) and (C) is ministerial in nature, and no implied duties or obligations of any kind shall be read into this Agreement against or on the part of Placement Agent s Counsel (collectively, the Placement Agent s Counsel Duties); (iii) shall not be obligated to take any legal or other action hereunder which might in its judgment involve or cause it to incur any expense or liability unless it shall have been furnished with indemnification acceptable to it, in its sole discretion; (iv) may rely on and shall be protected in acting or refraining from acting upon any written notice, instruction (including, without limitation, wire transfer instructions, whether incorporated herein or provided in a separate written instruction), instrument, statement, certificate, request or other document furnished to it hereunder and believed by it to be genuine and to have been signed or presented by the proper person, and shall have no responsibility for making inquiry as to, or for determining, the genuineness, accuracy or validity thereof, or of the authority of the person signing or presenting the same; and (v) may consult counsel satisfactory to it, and the opinion or advice of such counsel in any instance shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in accordance with the opinion or advice of such counsel. Documents and written materials referred to in this Section 3.6.2(a) include, without limitation, e-mail and other electronic transmissions capable of being printed, whether or not they are in fact printed; and any such e-mail or other electronic transmission may be deemed and treated by Placement Agent s Counsel as having been signed or presented by a person if it bears, as sender, the person s e-mail address.

(b) Placement Agent s Counsel shall not be liable to anyone for any action taken or omitted to be taken by it hereunder in connection with its Placement Agent s Counsel Duties, except in the case of Placement Agent s Counsel s gross negligence, willful misconduct or bad faith (in each case, as finally determined by a court of competent jurisdiction) in breach of the Placement Agent s Counsel Duties. IN NO EVENT SHALL THE PLACEMENT AGENT BE LIABLE FOR INDIRECT, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGE OR LOSS (INCLUDING BUT NOT LIMITED TO LOST PROFITS) WHATSOEVER, EVEN IF PLACEMENT AGENT S COUNSEL HAS BEEN INFORMED OF THE LIKELIHOOD OF SUCH LOSS OR DAMAGE AND REGARDLESS OF THE FORM OF ACTION.

(c) The Company and the Purchaser hereby indemnify and hold harmless Placement Agent s Counsel from and against, any and all loss, liability, cost, damage and expense, including, without limitation, reasonable counsel fees and expenses, which Placement Agent s Counsel may suffer or incur by reason of any action, claim or proceeding brought against Placement Agent s Counsel arising out of or relating to the performance of the Placement Agent s Counsel Duties, unless such action, claim or proceeding is the result of the gross negligence, willful misconduct or bad faith (in each case, as finally determined by a court of competent jurisdiction) of Placement Agent s Counsel.

(d) Placement Agent s Counsel has acted as legal counsel to the Placement Agent in connection with this Agreement, is merely acting as an escrow agent under this Agreement and is, therefore, hereby authorized to continue acting as legal counsel to the Placement Agent including, without limitation, with regard to any dispute arising out of this Agreement, the Warrant, the Escrow Amount or any other matter. Each of the Company and the

Purchaser hereby expressly consents to permit Placement Agent s Counsel to represent the Placement Agent in connection with all matters relating to or arising from this Agreement, including, without limitation, with regard to any dispute arising out of this Agreement, the Warrant, the Escrow Amount or any other matter, and hereby waives any conflict of interest or appearance of conflict or impropriety with respect to such representation. Each of the Company and the Purchaser has consulted with its own counsel specifically about this Section 3.6 to the extent they deemed necessary, and has entered into this Agreement after being satisfied with such advice.

SECTION 4. Representations, Warranties and Covenants of the Company. The Company hereby represents and warrants to, and covenants with, the Purchaser on the date hereof, on the Initial Closing Date and on the Second Closing Date as follows:

4.1 Organization and Qualification. The Company is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Florida and the Company is qualified to do business as a foreign corporation in each jurisdiction in which qualification is required, except where failure to so qualify would not reasonably be expected to have a Material Adverse Effect (as defined herein). The material subsidiaries of the Company are listed on Exhibit A (each a Subsidiary and collectively, the Subsidiaries). Each Subsidiary is a direct or indirect wholly owned subsidiary of the Company. Each Subsidiary is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization and is qualified to do business as a foreign entity in each jurisdiction in which qualification is required, except where failure to so qualify would not reasonably be expected to have a Material Adverse Effect. For purposes of this Agreement, the term Material Adverse Effect shall mean a material adverse effect upon the business, prospects, financial condition, properties or results of operations of the Company and its Subsidiaries, taken as a whole.

4.2 Authorized Capital Stock. The Company has the outstanding capital stock as most recently set forth in the Company Documents as filed with the Commission. The issued and outstanding shares of the Company s Common Stock have been duly authorized and validly issued, are fully paid and nonassessable, have been issued in compliance with all federal and state securities laws, were not issued in violation of or subject to any preemptive rights or other rights to subscribe for or purchase securities. The Company has authorized the issuance and sale of the Securities to the Purchasers at the Initial Closing and the Second Closing. Except as disclosed in the Company Documents as filed with the Commission, the Company does not have outstanding any options to purchase, or any preemptive rights or other rights to subscribe for or to purchase, any securities or obligations convertible into, or any contracts or commitments to issue or sell, shares of its capital stock or any such options, rights, convertible securities or obligations. The description of the Company s stock, stock bonus and other stock plans or arrangements and the options or other rights granted and exercised thereunder set forth in the Company Documents as filed with the Commission accurately and fairly presents all material information with respect to such plans, arrangements, options and rights. With respect to each Subsidiary, (i) all the issued and outstanding shares of each Subsidiary s capital stock have been duly authorized and validly issued, are fully paid and nonassessable, have been issued in compliance with applicable federal and state securities laws, were not issued in violation of or subject to any preemptive rights or other rights to subscribe for or purchase securities, and (ii) there are no outstanding options to purchase, or any preemptive rights or other rights to subscribe

for or to purchase, any securities or obligations convertible into, or any contracts or commitments to issue or sell, shares of any Subsidiary s capital stock or any such options, rights, convertible securities or obligations.

4.3 Issuance, Sale and Delivery of the Securities.

(a) The Securities have been duly authorized and, when issued, delivered and paid for in the manner set forth in this Agreement, will be duly authorized, validly issued, fully paid and nonassessable and free and clear of all pledges, liens, restrictions and encumbrances (other than restrictions on transfer under state and/or federal securities laws).

(b) The Warrants have been duly authorized. Upon the exercise of the Warrants, the Common Stock issuable upon exercise of the Warrants will be duly authorized, validly issued, fully paid and nonassessable and free and clear of all pledges, liens, restrictions and encumbrances (other than restrictions on transfer under state and/or federal securities laws). The Company has reserved sufficient number of shares of Common Stock for issuance upon the exercise of the Warrants free and clear of all pledges, liens, restrictions and encumbrances (other than restrictions on transfer under state and/or federal securities laws). The Warrants shall take the form of and conform with that certain Form of Warrant attached as Exhibit B hereto.

(c) The Anti-Dilution Shares have been duly authorized. When issued pursuant to Section 8 hereof, the Anti-Dilution Shares will be validly issued, fully paid and nonassessable, and free and clear of all pledges, liens, restrictions and encumbrances (other than restrictions on transfer under state and/or federal securities laws). The Company has reserved sufficient number of shares of Common Stock for issuance of the Anti-Dilution Shares in accordance with Section 8 free and clear of all pledges, liens, restrictions and encumbrances (other than restrictions on transfer under state and/or federal securities laws).

(d) No preemptive rights or other rights to subscribe for or purchase exist with respect to the issuance and sale of the Securities by the Company pursuant to this Agreement. Except as disclosed the Company Documents as filed with the Commission, no stockholder of the Company has any right (which has not been waived or has not expired by reason of lapse of time following notification of the Company s intent to file the registration statement to be filed by it pursuant to Section 7.1 (the Registration Statement)) to require the Company to register the sale of any shares owned by such stockholder under the Securities Act in the Registration Statement. Other than the Stockholder Approval to be obtained in connection with the Additional Securities and the Anti-Dilution Shares, no further approval or authority of the stockholders or the Board of Directors of the Company will be required for the issuance and sale of the Securities to be sold by the Company as contemplated herein.

4.4 Due Execution, Delivery and Performance of this Agreement. The Company has full legal right, corporate power and authority to enter into this Agreement and to perform the transactions contemplated hereby, subject in the case of the issuance, sale and delivery of the Additional Securities and the Anti-Dilution Shares to obtaining Stockholder Approval. This Agreement has been duly authorized, executed and delivered by the Company. The execution, delivery and performance of this Agreement by the Company and the consummation of the transactions herein contemplated will not violate any provision of the

certificate of incorporation or bylaws of the Company or any of its Subsidiaries and will not result in the creation of any lien, charge, security interest or encumbrance upon any assets of the Company or any of its Subsidiaries pursuant to the terms or provisions of, and will not (i) conflict with, result in the breach or violation of, or constitute, either by itself or upon notice or the passage of time or both, a default under (A) any agreement, lease, franchise, license, permit or other instrument to which the Company or any of its Subsidiaries is a party or by which the Company or any of its Subsidiaries or any of their respective properties may be bound or affected and in each case which would have a Material Adverse Effect, or (B) to the Company s knowledge, any statute or any judgment, decree, order, rule or regulation of any court or any regulatory body, administrative agency or other governmental body applicable to the Company or any of its Subsidiaries or any of their respective properties where such conflict, breach, violation or default is likely to result in a Material Adverse Effect. No consent, approval, authorization or other order of any court, regulatory body, administrative agency or other governmental body is required for the execution and delivery of this Agreement or the consummation of the transactions contemplated by this Agreement, except for compliance with the blue sky laws and federal securities laws applicable to the offering of the Securities to the Purchaser. Upon the execution and delivery of this Agreement, and assuming the valid execution thereof by the Purchaser, this Agreement will constitute a valid and binding obligation of the Company, enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors and contracting parties rights generally and except as enforceability may be subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law) and except as the indemnification agreements of the Company in Section 7.3 hereof may be limited by federal or state securities laws or the public policy underlying such laws.

4.5 Accountant. The firm of Berenfeld Spritzer Schechter & Sheer, which has expressed its opinion with respect to the consolidated financial statements to be included or incorporated by reference in the Registration Statement and the prospectus which forms a part thereof (the Prospectus), is an independent accountant as required by the Securities Act and the rules and regulations promulgated thereunder (the Rules and Regulations).

4.6 No Defaults. Neither the Company nor any of its Subsidiaries is in violation or default of any provision of its certificate of incorporation or bylaws, or in breach of or default with respect to any provision of any agreement, judgment, decree, order, lease, franchise, license, permit or other instrument to which it is a party or by which it or any of its properties are bound which could reasonably be expected to have a Material Adverse Effect and there does not exist any state of facts which, with notice or lapse of time or both, would constitute an event of default on the part of the Company or any of its Subsidiaries as defined in such documents and which would have a Material Adverse Effect.

4.7 Contracts. All of the Company s material contracts have been filed with the Commission. All of such contracts are in full force and effect on the date hereof; and neither the Company nor any of its Subsidiaries is, nor, to the Company s knowledge, is any other party in breach of or default under any of such contracts which would have a Material Adverse Effect.

4.8 No Actions. Except as disclosed in the Company Documents as filed with the Commission, (1) there are no legal or governmental actions, suits or proceedings pending and (2) to the Company s knowledge, there are no inquiries or investigations, nor are there any legal or governmental actions, suits, or proceedings threatened to which the Company or any of its Subsidiaries is or may be a party or of which property owned or leased by the Company or any of its Subsidiaries is or may be the subject, or related to environmental or discrimination matters, which actions, suits or proceedings, individually or in the aggregate, might reasonably be expected to have a Material Adverse Effect; and no labor disturbance by the employees of the Company or any of its Subsidiaries exists or, to the Company s knowledge, is imminent which might reasonably be expected to have a Material Adverse Effect. Neither the Company nor any of its Subsidiaries is party to or subject to the provisions of any injunction, judgment, decree or order of any court, regulatory body, administrative agency or other governmental body which might reasonably be expected to have a Material Adverse Effect.

4.9 Properties. The Company and the Subsidiaries have good and marketable title to all properties and assets reflected as owned in the financial statements included in the Company Documents as filed with the Commission, subject to no lien, mortgage, pledge, charge or encumbrance of any kind except (i) those, if any, reflected in such financial statements, or (ii) those which are not material in amount and do not adversely affect the use of such property by the Company and its Subsidiaries. Each of the Company and its Subsidiaries holds its leased properties under valid and binding leases, with such exceptions as are not materially significant in relation to its business taken as a whole.

4.10 No Material Change. Except as disclosed in the Company Documents as filed with the Commission, since March 31, 2005 (i) the Company and its Subsidiaries have not incurred any material liabilities or obligations, indirect, or contingent, or entered into any material oral or written agreement or other transaction which is not in the ordinary course of business or which could reasonably be expected to result in a material reduction in the future earnings of the Company and its Subsidiaries; (ii) the Company and its Subsidiaries have not sustained any material loss or interference with their businesses or properties from fire, flood, windstorm, accident or other calamity not covered by insurance; (iii) the Company and its Subsidiaries have not paid or declared any dividends or other distributions with respect to their capital stock and neither the Company nor any of its Subsidiaries is in default in the payment of principal or interest on any outstanding debt obligations; (iv) there has not been any change in the capital stock of the Company or any of its Subsidiaries other than the sale of the Securities hereunder, shares or options issued pursuant to employee equity incentive plans or purchase plans approved by the Company s Board of Directors and repurchases of shares or options pursuant to repurchase plans already approved by the Company s Board of Directors, or indebtedness not incurred in the ordinary course of business that is material to the Company and its Subsidiaries, taken as a whole; and (v) there has not been any other event which has caused a Material Adverse Effect.

4.11 Intellectual Property. Each of the Company and its Subsidiaries owns or has obtained valid and enforceable licenses or options for the inventions, patent applications, patents, trademarks (both registered and unregistered), trade names, copyrights and trade secrets necessary for the conduct of the its business as currently conducted (collectively, the Intellectual Property). There are no third parties who have any ownership rights to any

Intellectual Property that is owned by, or has been licensed to, the Company or its Subsidiaries for the products described in the Company Documents as filed with the Commission that would preclude the Company or its Subsidiaries from conducting its business as currently conducted and have a Material Adverse Effect, except for the ownership rights of the owners of the Intellectual Property licensed or optioned by the Company or its Subsidiaries. To the Company s knowledge, there are currently no sales of any products that would constitute an infringement by third parties of any Intellectual Property owned, licensed or optioned by the Company or its Subsidiaries, which infringement would have a Material Adverse Effect. There is no pending or, to the Company s knowledge, threatened action, suit, proceeding or claim by others challenging the rights of the Company or its Subsidiaries in or to any Intellectual Property owned, licensed or optioned by the Company or its Subsidiaries, other than claims which would not reasonably be expected to have a Material Adverse Effect. There is no pending or, to the Company s knowledge, threatened action, suit, proceeding or claim by others challenging the validity or scope of any Intellectual Property owned, licensed or optioned by the Company or its Subsidiaries, other than non-material actions, suits, proceedings and claims. There is no pending or, to the Company s knowledge, threatened action, suit, proceeding or claim by others that the Company any of its Subsidiaries infringes or otherwise violates any patent, trademark, copyright, trade secret or other proprietary right of others, other than non-material actions, suits, proceedings and claims.

4.12 Compliance. Neither the Company nor any of its Subsidiaries has been advised, nor has reason to believe, that it is not conducting its business in compliance with all applicable laws, rules and regulations of the jurisdictions in which it is conducting its business, including, without limitation, all applicable local, state and federal environmental laws and regulations; except where failure to be so in compliance would not have a Material Adverse Effect.

4.13 Taxes. Each of the Company and its Subsidiaries has filed all necessary federal, state and foreign income and franchise tax returns and has paid or accrued all taxes shown as due thereon, and neither the Company nor any of its Subsidiaries has knowledge of a tax deficiency which has been or might be asserted or threatened against it which might reasonably be expected to have a Material Adverse Effect.

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

4.15 Investment Company. The Company is not an investment company or an affiliated person of, or promoter or principal underwriter for an investment company, within the meaning of the Investment Company Act of 1940, as amended.

4.16 Offering Materials. The Company has not distributed and will not distribute prior to the Closing Date any offering material in connection with the offering and sale of the Securities to the Purchaser other than the Company Documents. Neither the Company nor any person acting on its behalf has in the past or will hereafter take any action independent of the

Placement Agent to sell, offer for sale or solicit offers to buy any securities of the Company which would subject the offer, issuance or sale of the Securities to the Purchaser, as contemplated by this Agreement, to the registration requirements of Section 5 of the Securities Act.

4.17 Insurance. The Company and its Subsidiaries maintain insurance of the types and in the amounts that the Company reasonably believes is adequate for their businesses, including, but not limited to, insurance covering all real and personal property leased by the Company and its Subsidiaries against theft, damage, destruction, acts of vandalism and all other risks customarily insured against by similarly situated companies, all of which insurance is in full force and effect.

4.18 Additional Information. The information contained in (a) through (h) below (the Company Documents) did not, as of the date of the applicable document, include any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances in which they were made, not misleading, as of their respective filing dates or, if amended, as so amended:

(a) the Company s Annual Report on Form 10-KSB for the fiscal year ended September 30, 2004;

(b) the Company s Quarterly Report on Form 10-QSB for the quarter ended December 31, 2004;

(c) the Company s Quarterly Report on Form 10-QSB for the quarter ended March 31, 2005;

(d) the Company s Quarterly Report on Form 10-QSB for the quarter ended June 30, 2005;

(e) the Company s Current Reports on Form 8-K filed on May 20, 2005; June 10, 2005; August 19, 2005; August 25, 2005; September 9, 2005; and November 30, 2005;

(f) the Company s Proxy Statement for the Annual Meeting of Stockholders held on February 4, 2005;

(g) the Company s Definitive Information Statement filed on November 11, 2005; and

(h) all other documents, if any, filed by the Company with the Commission since September 30, 2004 pursuant to the reporting requirements of the Securities Exchange Act of 1934, as amended (the Exchange Act).

4.19 Price of Common Stock. The Company has not taken, and will not take, directly or indirectly, any action designed to cause or result in, or which has constituted or which might reasonably be expected to constitute, the stabilization or manipulation of the price of the shares of the Common Stock to facilitate the sale or resale of the Securities.

4.20 Corporate Legal Opinion. As a condition to the Purchaser s obligation to purchase the Securities, legal counsel to the Company will deliver one or more legal opinions to the Purchaser in a form reasonably satisfactory to counsel to the Placement Agent. Such opinions also shall state that the Placement Agent may rely thereon as though the opinions were addressed directly to such Placement Agent.

4.21 Certificate. At each Closing, the Company will deliver to the Purchaser a certificate executed by the chief executive officer and the chief financial or accounting officer of the Company, dated as of the applicable Closing Date, in form and substance reasonably satisfactory to the Purchaser, to the effect that the representations and warranties of the Company set forth in this Section 4 are true and correct as of the date of this Agreement and as of such Closing Date and that the Company has complied with all the agreements and satisfied all the conditions herein on its part to be performed or satisfied on or prior to such Closing Date.

4.22 Reporting Company; Form S-3. The Company is subject to the reporting requirements of the Exchange Act. The Company is eligible to register the Securities for resale by the Purchaser on a registration statement on Form S-3 under the Securities Act. There exist no facts or circumstances (including without limitation any required approvals or waivers or any circumstances that may delay or prevent the obtaining of accountant s consents) that reasonably could be expected to prohibit or delay the preparation and filing of a registration statement on Form S-3 that will be available for the resale of the Securities by the Purchaser.

4.23 Use of Proceeds. The Company expects to use the proceeds from the sale of Securities for working capital and general corporate purposes, as well as in connection with selected acquisitions that may be considered in the future in the lawn and pest control business. Pending such uses, the Company intends to invest the net proceeds in short-term, interest-bearing, investment grade securities.

4.24 Approvals. Prior to the Initial Closing, the Company shall obtain approval of the American Stock Exchange for the transactions contemplated by this Agreement. Prior to the Second Closing, the Company shall obtain the Stockholder Approval and shall obtain the approval of the American Stock Exchange for the transactions contemplated by this Agreement. For clarification purposes only and without implication to the contrary, the transactions contemplated by this Agreement include only the transaction between the Company and the Purchaser and do not include any other transaction between the Company and any other third party purchaser of the Company s securities.

4.25 Non-Public Information. Neither the Company nor, to the Company s knowledge, any person acting on behalf of the