

SUNAIR SERVICES CORP

Form PREM14A

October 02, 2009

Table of Contents

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
SCHEDULE 14A
(RULE 14a-101)
INFORMATION REQUIRED IN PROXY STATEMENT
SCHEDULE 14A INFORMATION
PROXY STATEMENT PURSUANT TO SECTION 14(A) OF THE SECURITIES
EXCHANGE ACT OF 1934**

Filed by the registrant

Filed by a party other than the registrant

Check the appropriate box:

Preliminary proxy statement

Confidential, for Use of the Commission only (as permitted by Rule 14a-6(e)(2))

Definitive proxy statement

Definitive additional materials

Soliciting material pursuant to Rule 14a-11(c) or Rule 14a-12

SUNAIR SERVICES CORPORATION

(Name of Registrant as Specified in Its Charter)

Payment of filing fee (Check the appropriate box):

No fee required.

Fee computed on the table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

(1) Title of each class of securities to which transaction applies:

Common Stock, par value \$.10 per share, of Sunair Services Corporation , or Sunair common stock

(2) Aggregate number of securities to which transaction applies:

13,093,588 shares of Sunair s common stock

303,250 shares underlying options with exercise prices equal to or less than \$2.75 per share

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11:

The filing fee was determined based upon (a) 13,093,588 shares of Sunair s common stock and (b) 303,250 options to purchase shares of Sunair s common stock with an exercise price less than \$2.75 per share. The filing fee was determined by adding (x) the product of (i) the number of shares of Sunair common stock that are proposed to be acquired in the merger and (ii) the consideration of \$2.75 in cash per share of common stock, plus (y) \$287,500 expected to be paid to holders of options with an exercise price less than \$2.75 per share ((x) and (y) together, the Total Consideration). The amount of the filing fee, calculated in accordance with Securities Exchange Act Rule 0-11(c)(1), was calculated by multiplying the Total Consideration by 0.000055880.

(4) Proposed maximum aggregate value of transaction:

\$36,294,867

(5) Total fee paid:
\$2,025.25

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:

Table of Contents

**SUNAIR SERVICES CORPORATION
1350 E. NEWPORT CENTER DRIVE, SUITE 201
DEERFIELD BEACH, FLORIDA 33442**

_____, 2009

Dear Shareholder:

You are cordially invited to attend a special meeting of the shareholders of Sunair Services Corporation (Sunair) on _____, 2009 at 11:00 a.m. Eastern Daylight Time, at the Hilton Hotel, 100 Fairway Drive, Deerfield Beach, Florida 33441.

The board of directors of Sunair has approved a merger agreement providing for the merger of Sunair with and into Buyer Acquisition Company, Inc. (Merger Sub), a wholly-owned subsidiary of Massey Services, Inc. (Massey). If the merger is completed, you will receive \$2.75 in cash for each share of Sunair s common stock that you own and Sunair will become a wholly owned subsidiary of Massey.

At the special meeting, you will be asked to consider and vote on a proposal to adopt the Agreement and Plan of Merger, dated as of September 28, 2009, by and among Sunair, Massey and Merger Sub. After careful consideration, our board of directors approved the merger agreement, the merger and the other transactions contemplated by the merger agreement and determined that the merger agreement, the merger and the other transactions contemplated by the merger agreement are advisable, fair to and in the best interests of our shareholders. **THE BOARD OF DIRECTORS RECOMMENDS THAT YOU VOTE FOR THE ADOPTION OF THE MERGER AGREEMENT.**

The proxy statement attached to this letter provides you with information about the merger and the special meeting. A copy of the merger agreement is attached as Annex A to this proxy statement. We encourage you to read the entire proxy statement carefully. You may also obtain additional information on Sunair from documents we have filed with the Securities and Exchange Commission.

Your vote is very important, regardless of the number of shares of our common stock you own. The merger cannot be completed unless shareholders holding a majority of the outstanding shares of Sunair s common stock as of October 14, 2009, the record date, approve the merger agreement. If you fail to vote on the merger agreement or fail to instruct your broker on how to vote, it will have the same effect as voting against the approval of the merger agreement.

On behalf of the board of directors, thank you for your continued support.

Sincerely,

Jack I. Ruff
President and Chief Executive Officer

WHETHER OR NOT YOU EXPECT TO BE PRESENT AT THE SPECIAL MEETING, PLEASE COMPLETE, SIGN AND DATE THE ENCLOSED PROXY CARD AND RETURN IT PROMPTLY IN THE ENCLOSED RETURN ENVELOPE. NO POSTAGE IS REQUIRED IF MAILED IN THE UNITED STATES. SHAREHOLDERS WHO EXECUTE A PROXY CARD MAY NEVERTHELESS ATTEND THE MEETING, REVOKE THEIR PROXY AND VOTE THEIR SHARES IN PERSON.

THIS PROXY STATEMENT IS DATED _____, 2009 AND IS FIRST BEING
MAILED TO SHAREHOLDERS ON OR ABOUT _____, 2009.

Table of Contents

**SUNAIR SERVICES CORPORATION
DEERFIELD BEACH, FLORIDA 33487**

**NOTICE OF SPECIAL MEETING OF SHAREHOLDERS
TO BE HELD , 2009**

A special meeting of the shareholders of Sunair Services Corporation, a Florida corporation (Sunair), we, us or our will be held at the Hilton Hotel, 100 Fairway Drive, Deerfield Beach, Florida 33441, on , 2009 beginning at 11:00 a.m., local time, for the following purposes:

1. *Adoption of the merger agreement.* To consider and vote on a proposal to adopt the Agreement and Plan of Merger, dated as of September 28, 2009, among Massey Services, Inc. (Massey), Buyer Acquisition Company Inc., a wholly owned subsidiary of Massey (Merger Sub), and Sunair, pursuant to which, upon the merger becoming effective, each outstanding share of Sunair common stock (other than shares held by Massey, Merger Sub or any direct or indirect wholly owned subsidiary of Massey or Merger Sub) will be converted into the right to receive \$2.75 in cash, without interest.
2. *Adjournment of the Special Meeting.* To approve the adjournment of the special meeting, if necessary or appropriate, for, among other reasons, the solicitation of additional proxies in the event that there are not sufficient votes at the time of the special meeting to approve the proposal to adopt the merger agreement.
3. *Other Matters.* To transact such other business as may properly come before the special meeting or any adjournment thereof.

Only shareholders of record of our common stock as of the close of business on October 14, 2009, will be entitled to notice of, and to vote at, the special meeting and any adjournment or postponement of the special meeting. All shareholders of record are cordially invited to attend the special meeting in person.

Your vote is very important, regardless of the number of shares of our common stock you own. The merger cannot be completed unless shareholders holding a majority of the outstanding shares of Sunair s common stock as of the record date approve the merger agreement. If you fail to vote on the merger agreement or fail to instruct your broker on how to vote, it will have the same effect as voting against the approval of the merger agreement. Even if you plan to attend the meeting in person, we request that you complete, sign, date and return the enclosed proxy in the envelope provided and thus ensure that your shares will be represented at the meeting if you are unable to attend.

The board of directors of Sunair recommends that shareholders vote FOR the adoption of the merger agreement and FOR the approval of the adjournment of the special meeting, if necessary or appropriate, for the solicitation of additional proxies in the event that there are not sufficient votes at the time of the special meeting to approve the proposal to adopt the merger agreement.

BY ORDER OF THE BOARD OF DIRECTORS,

Jack I. Ruff
President and Chief Executive Officer

Deerfield Beach, Florida
, 2009

WHETHER OR NOT YOU EXPECT TO BE PRESENT AT THE SPECIAL MEETING, PLEASE COMPLETE, SIGN AND DATE THE ENCLOSED PROXY CARD AND RETURN IT PROMPTLY IN THE ENCLOSED RETURN ENVELOPE. NO POSTAGE IS REQUIRED IF MAILED IN THE UNITED STATES. SHAREHOLDERS WHO EXECUTE A PROXY CARD MAY NEVERTHELESS ATTEND THE MEETING, REVOKE THEIR PROXY AND VOTE THEIR SHARES IN PERSON.

Table of Contents

TABLE OF CONTENTS

	Page No.
<u>SUMMARY</u>	4
<u>QUESTIONS AND ANSWERS ABOUT THE SPECIAL MEETING AND THE MERGER</u>	9
<u>CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS</u>	12
<u>THE SPECIAL MEETING</u>	13
<u>Place, Time and Purpose of the Special Meeting</u>	13
<u>Record Date and Quorum</u>	13
<u>Required Vote</u>	14
<u>Coconut Palm Proxy</u>	14
<u>Coconut Palm Proxy Litigation</u>	15
<u>Proxies; Revocation</u>	16
<u>Solicitation of Proxies</u>	16
<u>THE PARTIES TO THE MERGER AGREEMENT</u>	17
<u>Sunair Services Corporation</u>	17
<u>Massey Services, Inc.</u>	17
<u>Merger Sub</u>	17
<u>THE MERGER</u>	17
<u>Background of the Merger</u>	17
<u>Reasons for the Merger</u>	24
<u>Recommendation of our Board of Directors</u>	25
<u>Opinion of Hyde Park Capital</u>	25
<u>Other Matters</u>	30
<u>Certain Effects of the Merger</u>	30
<u>Effects on Sunair if the Merger is Not Completed</u>	31
<u>Interests of Our Directors and Executive Officers in the Merger</u>	31
<u>No Appraisal or Dissenters' Rights</u>	34
<u>Delisting and Deregistration of Our Common Stock</u>	34
<u>Material United States Federal Income Tax Consequences of the Merger</u>	34
<u>Regulatory Approvals</u>	36
<u>THE MERGER AGREEMENT</u>	36
<u>Form of Merger</u>	36
<u>Effective Time of the Merger</u>	37
<u>Articles of Incorporation and Bylaws</u>	37
<u>Directors and Officers of the Surviving Corporation</u>	37
<u>Merger Consideration</u>	37
<u>Effect on Stock Options</u>	37
<u>Effect on Warrants</u>	37
<u>Procedures for Surrender of Certificates</u>	38
<u>Representations and Warranties</u>	38
<u>Conduct of Business by Sunair Prior to Consummation of the Merger</u>	40
<u>Other Covenants under the Merger Agreement</u>	41
<u>Financing</u>	44
<u>Conditions to Consummation of the Merger</u>	44
<u>Termination</u>	45

Table of Contents

	Page No.
<u>Termination Fees</u>	46
<u>Governing Law</u>	46
<u>Amendment and Waiver</u>	46
<u>PAST CONTACTS, TRANSACTIONS OR NEGOTIATIONS</u>	47
<u>MARKET PRICE OF OUR COMMON STOCK</u>	47
<u>SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT</u>	48
<u>SHAREHOLDERS SHARING AN ADDRESS</u>	50
<u>SUBMISSION OF SHAREHOLDER PROPOSALS</u>	50
<u>WHERE YOU CAN FIND MORE INFORMATION</u>	50

Table of Contents

SUMMARY

This summary highlights selected information from this proxy statement and may not contain all of the information that is important to you. To understand the merger fully, and for a more complete description of the legal terms of the merger, you should carefully read this entire proxy statement, the annexes attached to this proxy statement and the documents referred to or incorporated by reference in this proxy statement. We have included page references in parentheses to direct you to the appropriate place in this proxy statement for a more complete description of the topics presented in this summary. In this proxy statement, the terms Sunair, we, us and our refer to Sunair Services Corporation.

The Parties to the Merger (page 17)

Sunair

Sunair, through its wholly owned subsidiary, Middleton Pest Control, Inc. (Middleton), with headquarters located in Orlando, Florida, provides pest control and lawn care services to both residential and commercial customers. Middleton provides essential pest control services and protection against termites and insects to homes and businesses. In addition, Middleton supplies lawn care services to homes and businesses, which includes fertilization treatments and protection against disease, weeds and insects for lawns and shrubs.

Sunair was incorporated in Florida on September 20, 1956. Sunair's principal executive offices is located at 1350 E. Newport Center Drive, Suite 201, Deerfield Beach, Florida 33442 and its telephone number is (561) 208-7400.

Massey

Massey, along with its subsidiaries, provides residential and commercial pest control, termite protection and lawn, tree and shrub care services in Florida, Georgia, and Louisiana. Its services include pest control, termite protection, drain line services, flying insect program, bird control program, termite protection, and landscape care, including GreenUP landscape services, such as soil testing, customized nutritional programs, weed control and prevention, insect control and prevention, disease control and prevention, tree and shrub care, and lawn aeration.

Massey was incorporated in the state of Florida on February 5, 1985. Massey's principal executive office is located at 315 Groveland Street, Orlando, Florida 32804 and its telephone number is (407) 645-2500.

Merger Sub

Buyer Acquisition Company, Inc. (Merger Sub), a Florida corporation and a wholly owned subsidiary of Massey, was formed solely for the purpose of entering into the merger agreement with Sunair and completing the merger, and has not conducted any business operations.

Merger Sub was incorporated in the state of Florida on September 21, 2009. Merger Sub's principal executive office is located at 315 Groveland Street, Orlando, Florida 32804 and its telephone number is (407) 645-2500.

The Special Meeting (page 13)

Date, Time, Place and Purpose. The special meeting will be held on _____, 2009, at 11:00 a.m., local time, at the Hilton Hotel, 100 Fairway Drive, Deerfield Beach, Florida 33441. At the special meeting, you will be asked to consider and vote upon proposals to:

- (i) approve the merger agreement;
- (ii) adjourn the special meeting, if necessary or appropriate to permit further solicitation of proxies if there are not sufficient votes at the time of the special meeting to approve the merger agreement; and
- (iii) transact such other business as may properly come before the special meeting or any adjournments of the special meeting.

Table of Contents

Record Date and Voting. Only shareholders who hold shares of our common stock at the close of business on October 14, 2009, the record date (record date) for the special meeting, will be entitled to vote at the special meeting. Each share of our common stock outstanding on the record date will be entitled to one vote on each matter submitted to shareholders for approval at the special meeting. As of the record date, there were shares of our common stock outstanding.

Vote Required. The approval of the merger agreement requires the affirmative vote of at least a majority of the outstanding shares of our common stock as of the record date. The proposal to approve the adjournment of the special meeting if necessary or appropriate, to solicit additional proxies requires (i) if a quorum exists, that the number of shares voted in favor of adjournment are greater than those voted against, or (ii) in the absence of a quorum, the affirmative vote of the holders of a majority of the shares of our common stock represented at the special meeting.

Coconut Palm Proxy (page 14)

Coconut Palm Capital Investors II, Ltd. (Coconut Palm) has the power to vote shares of Sunair s common stock owned by its limited partners pursuant to proxy agreements executed by its limited partners upon redemption of their partnership interests. Richard Rochon, our Chairman, and Mario Ferrari, our Vice Chairman, are deemed to be the beneficial owners of Coconut Palm. Mr. Rochon and Mr. Ferrari have advised us that they will not exercise their proxy authority to vote the shares of Sunair s common stock owned by Coconut Palm s former limited partners (limited partners) at the special meeting held on , 2009 and these limited partners will be entitled to vote these shares at the special meeting held on , 2009. Mr. Rochon and Mr. Ferrari s decision not to exercise their proxy to vote the shares of Sunair s common stock owned by the limited partners is only for the proposals to be presented at the special meeting held on , 2009, and they reserve the right to exercise their proxy voting authority for the limited partners at any subsequent meetings of shareholders or on any matters approved by written consent.

There is litigation relating to the validity of the Coconut Palm proxy. See *Coconut Palm Proxy Litigation* on page 15.

Certain Effects of the Merger (page 30)

If the merger agreement is adopted by our shareholders and the other conditions to closing are satisfied, Merger Sub will merge with and into Sunair, the separate corporate existence of Merger Sub will cease, and Sunair will continue as the surviving corporation, wholly owned by Massey. Upon completion of the merger, our common stock (other than shares held by Massey) will be converted into the right to receive \$2.75 per share, without interest and less any required withholding taxes. The surviving corporation will be a privately held corporation, and you will cease to have any ownership interest in the surviving corporation or any rights as a shareholder.

Recommendation of Our Board of Directors (page 25)

After careful consideration, our board of directors approved the merger agreement, the merger and the other transactions contemplated by the merger agreement and declared that the merger agreement, the merger and the other transactions contemplated by the merger agreement are advisable, fair to and in the best interests of our shareholders. **ACCORDINGLY, OUR BOARD OF DIRECTORS RECOMMENDS THAT YOU VOTE FOR THE ADOPTION OF THE MERGER AGREEMENT.**

In reaching its decision, our board of directors evaluated a variety of business, financial and market factors and consulted with our management team, legal and financial advisors and our special committee. In considering the recommendation of our board of directors with respect to the merger, you should be aware that certain of our directors and executive officers have interests in the merger that differ from, or are in addition to, your interests as a

shareholder. See *The Merger Interests of Our Directors and Executive Officers in the Merger* beginning on page 31.

Table of Contents

For the factors considered by our board of directors in reaching its decision to approve the merger agreement and the merger, see *The Merger Reasons for the Merger* beginning on page 24.

Opinion of Hyde Park Capital (page 25)

On September 27, 2009, Hyde Park Capital rendered its oral opinion to our board of directors (which was subsequently confirmed in writing by delivery of Hyde Park Capital's written opinion dated September 28, 2009) to the effect that, as of September 28, 2009, the merger consideration to be received by the holders of Sunair common stock in the merger was fair to the holders of Sunair common stock from a financial point of view.

Hyde Park Capital's opinion was directed to Sunair's board of directors and only addressed the fairness from a financial point of view of the merger consideration to be received by the holders of Sunair common stock in the merger and not any other aspect or implication of the merger. The summary of Hyde Park Capital's opinion in this proxy statement is qualified in its entirety by reference to the full text of the written opinion which is included as Annex B to this proxy statement and sets forth the procedures followed, assumptions made, qualifications and limitations on the review undertaken and other matters considered by Hyde Park Capital in preparing its opinion. Sunair encourages its shareholders to carefully read the full text of Hyde Park Capital's written opinion. However, neither Hyde Park Capital's opinion nor the summary of its opinion and the related analyses set forth in this proxy statement are intended to be, and do not constitute, advice or a recommendation to any Sunair shareholder as to how Sunair shareholders should act or vote with respect to the proposed merger. We paid Hyde Park Capital a customary fee in connection with the delivery of its opinion. See *The Merger Opinion of Hyde Park Capital*.

Financing (page 44)

Massey estimates the total amount of funds necessary to complete the merger and the related transactions to be approximately \$54 million, which includes approximately \$36,007,367 million to be paid to our shareholders, with \$287,192.50 to cash out existing options and the remainder to be applied to pay our outstanding debt and fees and expenses incurred in connection with the merger and the related transactions. These payments are expected to be funded with a \$33 million senior credit facility from SunTrust Bank and M&I Marshall and Ilsley Bank (M&I Bank). In addition, Massey has received a commitment letter from AEA Mezzanine Management LP (AEA Mezzanine) for additional financing of up to \$20 million.

Effect on Stock Options and Warrants (page 37)

Stock Options

At the effective time of the merger, all outstanding options to purchase shares of our common stock will be cancelled by us and will be converted into the right to receive a cash payment equal to the excess, if any, of \$2.75 per share in cash over the exercise price per share of the option, multiplied by the number of shares subject to the applicable option, whether or not then exercisable, without interest and less any applicable withholding tax. If the exercise price per share of any option is \$2.75 or greater, the holder thereof will not receive any cash payment when the option is cancelled.

Warrants

We currently have warrants outstanding to purchase an aggregate of 6 million shares of our common stock, at prices of \$6.30 per share for 1 million warrants and \$7.00 per share for 5 million warrants, which expire on dates ranging from February 7, 2010 through January 27, 2011. Massey has agreed to assume these warrants and at the effective

time each outstanding and unexercised warrant shall be assumed by the surviving corporation on the same terms and conditions. If a warrant holder exercises a warrant after the merger is closed, the surviving company has made provision so that the holder upon exercise of all or any part of the holder's warrant by paying the exercise price specified in the warrant agreement, either \$6.30 per share or \$7.00 per share, shall be entitled to receive upon such exercise, the cash, \$2.75 per share, that such warrant

Table of Contents

holder would have been entitled to receive if such warrant holder had exercised the warrant prior to the closing.

Interests of Our Directors and Executive Officers in the Merger (page 31)

Our directors and executive officers may have interests in the merger that are different from, or in addition to, yours, including the following:

our directors and executive officers will receive cash consideration for their stock options to the extent the exercise price of such options is less than \$2.75 per share;

in the event that certain executive officers or an officer resigns from their employment for good reason or are terminated without cause following completion of the merger, they are entitled to the severance benefits described under "The Merger - Interests of Our Directors and Executive Officers in the Merger";

the merger agreement provides for indemnification by Massey and liability insurance arrangements for each of our current and former directors and officers for a period of six years after completion of the merger, in each case for certain events occurring at or before the effective time of the merger; and

RPC Financial Advisors, LLC ("RPC"), a company affiliated with two of our directors and our chief executive officer, will receive a payment equal to two percent (2%) of Sunair's enterprise value, as determined by using the most recently available financial statements of Sunair at the closing. Based on Sunair's financial statements as of June 30, 2009, RPC would have received a transaction fee equal to \$1,090,386.

Our board of directors was aware of these interests and considered them, among other matters, in making its decisions.

No Appraisal Rights (page 34)

Under Florida law, you do not have appraisal rights in connection with the merger.

Material United States Federal Income Tax Consequences of the Merger (page 34)

For U.S. federal income tax purposes, the merger will be treated as a sale of the shares of our common stock for cash by each of our shareholders that receives cash pursuant to the merger. As a result, in general, each shareholder will recognize gain or loss equal to the difference, if any, between the amount of cash received in the merger and such shareholder's adjusted tax basis in the shares surrendered. Such gain or loss will be capital gain or loss if the shares of common stock surrendered are held as a capital asset in the hands of the shareholder, and will be long-term capital gain or loss if the shares of common stock have a holding period of more than one year at the time of the merger.

Shareholders are urged to consult their own tax advisors as to the particular tax consequences to them of the merger.

Regulatory Approvals (page 36)

Except for filing of articles of merger in Florida at or before the effective date of the merger and filing the proxy statement with the Securities and Exchange Commission ("SEC"), we are unaware of any material federal, state or foreign regulatory requirements or approvals required for the execution of the merger agreement or completion of the merger.

Procedure for Surrender of Certificates and Receipt of Merger Consideration (page 37)

Shortly after the effective time of the merger, a paying agent will mail a letter of transmittal and instructions to you and the other Sunair shareholders. The letter of transmittal and instructions will tell you how to surrender your stock certificates in exchange for the merger consideration. **You should not return your stock certificates with the enclosed proxy card, and you should not forward your stock certificates to the paying agent without a letter of transmittal.**

Table of Contents

No Solicitation of Competing Transaction Proposals (page 42)

The merger agreement restricts our ability to solicit or engage in discussions or negotiations with a third party regarding specified transactions involving Sunair. Despite these restrictions, under certain limited circumstances required for our board of directors to comply with its fiduciary duties, our board of directors may respond to a bona fide written takeover proposal or terminate the merger agreement and enter into an agreement with respect to a superior proposal if we pay a termination fee. We are required to pay a termination fee ranging from \$2.75 million to a maximum of \$3.5 million, which depends on when the merger agreement is terminated and Massey's costs of obtaining financing extensions or closing on the financing. We are required to pay this termination fee within 6 months after we terminate the merger agreement.

Conditions to Consummation of the Merger (page 44)

We and Massey will not complete the merger unless a number of conditions are satisfied or waived, as applicable, including approval by our shareholders of the merger agreement and Massey having sufficient funds at closing to satisfy all of its obligations under the merger agreement, including payment in full of the merger consideration.

Deposit (page 46)

Massey deposited \$4 million in an escrow account on the date of signing the merger agreement. If the merger agreement closes, this deposit will be applied to Sunair's closing expenses and any remaining amount will be deposited in the exchange fund and the paying agent will use the funds to pay the merger consideration to Sunair's shareholders. If the merger agreement does not close, this deposit will be returned to Massey, unless Sunair terminates the merger agreement in situations where it is entitled to a termination fee. If Sunair is entitled to a termination fee, the \$4 million deposit will be advanced to Sunair by the escrow agent as payment in full of the termination fee.

Termination of the Merger Agreement (page 45) and Termination Fees (page 46)

The merger agreement contains provisions addressing the circumstances under which we or Massey may terminate the merger agreement. We are required to pay Massey a termination fee of \$2.75 million if we terminate the merger agreement on or before November 15, 2009 because we have received a superior acquisition proposal. If we terminate the merger agreement after November 15, 2009 because we have received a superior acquisition proposal, the amount of the termination fee is equal to \$2.75 million plus the actual cost of lender's fee paid by Massey to extend the termination date of the financing letters beyond November 15, 2009 or to close on such financing, up to a maximum of \$3.5 million. We are required to pay this termination fee within six months after the date of the termination of the merger agreement.

Massey will pay us a termination fee of \$4 million if (i) we terminate the merger agreement because the merger has not closed on or before February 25, 2010 due to the failure of Massey to satisfy any of its obligations under the merger agreement or (ii) Massey has breached its covenants and obligations under the merger agreement, and these matters can not be cured, if curable, with 30 days notice, provided that in both situations we can not be in breach of any of our obligations under the merger agreement.

Market Price of Our Common Stock (page 47)

Our common stock is listed on the American Stock Exchange (the "AMEX") under the trading symbol "SNR". The closing sale price of our common stock on the AMEX on September 28, 2009, which was the last trading day before we announced the merger, was \$1.84. On _____, 2009, the last trading day before the date of this proxy statement, the closing price of our common stock on AMEX was \$ _____.

Table of Contents

QUESTIONS AND ANSWERS ABOUT THE SPECIAL MEETING AND THE MERGER

The following questions and answers are intended to address some commonly asked questions regarding the special meeting and the merger. These questions and answers may not address all questions that may be important to you as our shareholder. Please refer to the more detailed information contained elsewhere in this proxy statement, the annexes to this proxy statement and the documents referred to or incorporated by reference in this proxy statement.

Q: What is the date, time and place of the special meeting?

A: The special meeting of our shareholders will be held at the Hilton Hotel, 100 Fairway Drive, Deerfield Beach, Florida 33441, on _____, 2009, beginning at 11:00 a.m., local time.

Q: What am I being asked to vote on?

A: You are being asked to vote on the following:

Approval of the merger agreement (Proposal 1);

Approval of the adjournment of the special meeting, if necessary or appropriate, to solicit additional proxies if there are insufficient votes at the time of the meeting to approve the merger agreement (Proposal 2); and

The transaction of any other business that may properly come before the special meeting or any adjournments or postponements of the special meeting.

Q: How does the board of directors recommend that I vote?

A: Our board of directors recommends that you vote:

FOR the approval of the merger agreement (Proposal 1); and

FOR the approval of the adjournment of the special meeting, if necessary or appropriate, to solicit additional proxies if there are insufficient votes at the time of the meeting to approve the merger agreement (Proposal 2).

Q: How many shares must be present or represented at the special meeting in order to conduct business?

A: A quorum of shareholders is necessary to hold a valid special meeting. A quorum is present at the special meeting if a majority of the outstanding shares of our common stock entitled to vote on the record date are present in person or represented by proxy. Withheld votes, abstentions and broker non-votes are counted as present for the purpose of determining whether a quorum is present.

Q: What vote of our shareholders is required to approve the proposals?

A: The vote requirements to approve the proposals are as follows:

The proposal to approve the merger agreement (Proposal 1) requires the affirmative vote of the holders of a majority of the outstanding shares of our common stock as of the record date for the special meeting. **Because the required vote is based on the number of shares of our common stock outstanding and not the number**

of votes cast, failure to vote your shares (including as a result of broker non-votes) and abstentions will have the same effect as voting against approval of the merger agreement; and

The proposal to approve the adjournment of the special meeting (Proposal 2), if necessary or appropriate, to solicit additional proxies requires (i) if a quorum exists, that the number of shares voted in favor of adjournment are greater than those voted against, or (ii) in the absence of a quorum, the affirmative votes of the holders of a majority of the shares of our common stock represented at the special meeting. If a quorum is present, abstentions will not count as a vote cast on the proposal to adjourn the meeting, if necessary or appropriate to solicit additional proxies, but will count for the purpose of determining whether a quorum is present. As a result if a quorum is present and you abstain, it will have no effect

Table of Contents

on this proposal. If a quorum is not present, then an abstention or broker non-vote will have the same effect as a vote against this proposal.

We urge you to complete, sign and return the enclosed proxy card to assure the representation of your shares of Sunair's common stock at the special meeting.

Q: Who is entitled to vote at the special meeting?

A: Only shareholders of record as of the close of business on October 14, 2009, the record date for the special meeting, are entitled to receive notice of and to vote at the special meeting. You will have one vote at the special meeting for each share of our common stock you owned at the close of business on the record date. On the record date, shares of our common stock were outstanding and entitled to be voted at the special meeting.

Q: What do I need to do now? How do I vote?

A: We urge you to carefully read this proxy statement, including its annexes and any documents referred to herein in their entirety, and to consider how the merger affects you. If you are a shareholder of record, then you can ensure that your shares are voted at the special meeting by completing, signing, dating and mailing the accompanying proxy card and returning it in the envelope provided. If you are a registered shareholder and you attend the special meeting, you may deliver your completed proxy card in person or vote at the special meeting.

Please do NOT send in your stock certificates at this time.

If your shares of our common stock are held in street name by your broker, be sure to give your broker instructions on how you want to vote your shares because your broker will not be able to vote on the merger agreement proposal without instructions from you. See the question below: If my broker holds my shares in street name, will my broker vote my shares for me?

Q: What if I return my proxy card but do not provide voting instructions?

A: If you sign and return your proxy card and do not indicate how you want to vote, your proxy card will be voted **FOR** the proposal to approve the merger agreement, **FOR** the proposal to approve the adjournment of the special meeting, if necessary or appropriate to solicit additional proxies, and in accordance with the recommendation of our board of directors on any other matters properly brought before the meeting for a vote.

Q: If my broker holds my shares in street name, will my broker vote my shares for me?

A: Yes, but only if you provide specific instructions to your broker on how to vote. You should follow the directions provided by your broker regarding how to instruct your broker to vote your shares. Unless you follow the instructions, your shares will not be voted and will have the same effect as if you voted against the approval of the merger agreement.

Q: What is the difference between holding shares as a shareholder of record and as a beneficial owner?

A: Many of our shareholders hold their shares through a broker, trustee or other nominee (such as a bank) rather than directly in their own name. As summarized below, there are some distinctions between shares owned of record and those owned beneficially.

Shareholder of Record. If your shares are registered directly in your name with our transfer agent, American Stock Transfer & Trust Company, you are considered to be the shareholder of record with respect to those shares and these proxy materials are being sent directly to you. As the shareholder of record, you have the right to grant your proxy directly to us or to vote in person at the special meeting. We have enclosed a proxy card for you to use.

Beneficial Owner. If your shares are held in a brokerage account, by a trustee or by another nominee (such as a bank), you are considered the beneficial owner of shares held in street name and these proxy materials are being forwarded to you, together with a voting instruction card by your broker,

Table of Contents

trustee or nominee. As the beneficial owner, you have the right to direct your broker, trustee or other nominee on how to vote and you may also attend the special meeting.

Q: May I attend the special meeting?

A: You are entitled to attend the special meeting only if you were a shareholder as of the close of business on the record date or if you hold a valid proxy for the special meeting. You should be prepared to present photo identification for admittance to the special meeting. If you are a shareholder of record, your name will be verified against the list of shareholders of record on the record date prior to your being admitted to the special meeting. If you are not a shareholder of record but hold shares in street name through a broker, trustee or other nominee, you should provide proof of beneficial ownership on the record date, such as your most recent brokerage account statement, a copy of the voting instruction card provided to you by your broker or other nominee, or other similar evidence of ownership. If you do not provide photo identification or comply with the procedures outlined above, you will not be admitted to the special meeting.

Q: Should I send in my stock certificate(s) now?

A: NO. PLEASE DO NOT SEND ANY STOCK CERTIFICATES WITH YOUR PROXY. After the merger is completed, you will receive written instructions, including a letter of transmittal, for exchanging your shares of our common stock for the merger consideration of \$2.75 per share in cash, without interest and less applicable withholding tax.

Q: May I change my vote after I have mailed my signed proxy card?

A: Yes. You may change your vote at any time before the shares of our common stock reflected on your proxy card are voted at the special meeting. If you hold your shares in your name, you have the unconditional right to revoke your proxy at any time prior to its exercise by employing any of the following three methods:

first, you can deliver to our Corporate Secretary, at our offices located at 1350 E. Newport Center Drive, Suite 201, Deerfield Beach, Florida 33442, a written notice (dated later than the date of your proxy card) stating that you would like to revoke your proxy;

second, you can submit by mail a proxy dated after the date of the proxy you wish to revoke, provided the new proxy is received before the polls close at the special meeting; or

third, you can attend the meeting and vote in person.

Any written notice of revocation should be delivered to our Corporate Secretary at or before the taking of the vote at the special meeting. Revocation of your proxy, without any further action, will mean your shares will not be voted at the special meeting or counted towards satisfying the quorum requirements. Your attendance at the special meeting will not revoke your proxy unless you specifically request to vote at the special meeting.

If you have instructed your broker to vote your shares, you must follow directions received from your broker to change your vote. You cannot vote shares held in street name by returning a proxy card directly to us or by voting in person at the special meeting, unless you obtain a legal proxy from your bank, broker or other nominee.

Q: Who will bear the cost of the solicitation?

A:

The expense of soliciting proxies in the enclosed form will be borne by Sunair. In addition, we may reimburse brokers, banks and other custodians, nominees and fiduciaries representing beneficial owners of shares for their expenses in forwarding soliciting materials to such beneficial owners. Proxies may also be solicited by certain of our directors, officers and employees, personally or by telephone, facsimile or other means of communication.

Table of Contents

Q: What does it mean if I receive more than one set of voting materials?

A: If you have shares of our common stock that are registered differently and are in more than one account, you will receive more than one proxy card. Please follow the directions for submitting a proxy on each of the proxy cards you receive to ensure that all of your shares are voted.

Q: What happens if I sell my shares before the special meeting?

A: The record date of the special meeting is earlier than the special meeting and the date that the merger is expected to be completed. If you transfer your shares of Sunair common stock after the record date but before the special meeting, you will retain your right to vote at the special meeting but will have transferred the right to receive \$2.75 per share in cash to be received by our shareholders in the merger. In order to receive the \$2.75 per share, you must hold your shares through the completion of the merger.

Q: When do you expect the merger to be completed?

A: We are working toward completing the merger as quickly as possible, but we cannot predict the exact timing. We expect to complete the merger no later than five business days after all closing conditions contained in the merger agreement have been satisfied or waived. See *The Merger Agreement Conditions to the Merger*.

Q: When will I receive the cash consideration for my shares?

A: After the merger is completed, you will receive written instructions, including a letter of transmittal, that will explain how to exchange your shares for the cash consideration to be paid in the merger. When you properly complete and return the required documentation described in the written instructions, you will receive from the paying agent a payment of the cash consideration for your shares.

Q: Am I entitled to appraisal rights?

A: No, you do not have appraisal rights in connection with the merger.

Q: Who can help answer my other questions?

A: If you have additional questions about the special meeting or the merger, including the procedures for voting your shares, or if you would like additional copies, without charge, of this proxy statement, you should contact our Corporate Secretary at (561) 208-7400. If your broker holds your shares, you may also call your broker for additional information.

CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

This proxy statement, and the documents to which we refer you in this proxy statement, contain forward-looking statements about our plans, objectives, expectations and intentions. Forward-looking statements include information concerning possible or assumed future results of operations of our company, the expected completion and timing of the merger and other information relating to the merger. Generally these forward-looking statements can be identified by the use of forward-looking terminology such as anticipate, believe, estimate, expect, may, should, project and similar expressions. For each of these statements, we claim the protection of the safe harbor for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995. You should read statements that contain these words carefully. They discuss our future expectations or state other forward-looking

information, and may involve known and unknown risks over which we have no control. Those risks include, without limitation:

the current market price of our common stock may reflect a market assumption that the merger will occur, and a failure to complete the merger could result in a decline in the market price of our common stock;

the occurrence of any event, change or other circumstances that could give rise to a termination of the merger agreement;

Table of Contents

under certain circumstances, we may have to pay a termination fee to Massey of \$2.75 million up to a maximum of \$3.5 million;

the inability to complete the merger due to the failure to obtain shareholder approval or the failure to satisfy other conditions to consummation of the merger;

the failure of the merger to close for any other reason, including Massey's inability to have adequate funds to purchase Sunair at closing;

our remedies against Massey with respect to certain breaches of the merger agreement may not be adequate to cover our damages;

the proposed transactions may disrupt current business plans and operations, and there may be potential difficulties in attracting and retaining employees as a result of the announced merger;

due to restrictions imposed in the merger agreement, we may be unable to respond effectively to competitive pressures, industry developments and future opportunities;

the effect of the announcement of the merger on our business relationships, operating results and business generally;

the costs, fees, expenses and charges we have incurred, and may incur, related to the merger, whether or not the merger is completed;

the risk that we may be subject to litigation in connection with the merger; and

other risks detailed in our filings with the Securities and Exchange Commission (the "SEC"), including Item 1A. Risk Factors in our Annual Report on Form 10-K for our fiscal year ended September 30, 2008. See *Where You Can Find More Information* on page 50.

We believe that the assumptions on which our forward-looking statements are based are reasonable. However, we cannot assure you that the actual results or developments we anticipate will be realized or, if realized, that they will have the expected effects on our business or operations. All subsequent written and oral forward-looking statements concerning the merger or other matters addressed in this proxy statement and attributable to us or any person acting on our behalf are expressly qualified in their entirety by the cautionary statements contained or referred to in this section. Forward-looking statements speak only as of the date of this proxy statement or the date of any document incorporated by reference in this document. Except as required by applicable law or regulation, we do not undertake to release the results of any revisions of these forward-looking statements to reflect future events or circumstances.

THE SPECIAL MEETING

Place, Time and Purpose of the Special Meeting

This proxy statement is being furnished to our shareholders as part of the solicitation of proxies by our board of directors for use at the special meeting to be held at the Hilton Hotel, 100 Fairway Drive, Deerfield Beach, Florida 33441 on _____, 2009, beginning at 11:00 a.m., Eastern Daylight Time, or at any postponement or adjournment thereof. The purpose of the special meeting is for our shareholders to consider and vote upon the adoption of the merger agreement. Our shareholders must adopt the merger agreement for the merger to occur. If the shareholders fail

to adopt the merger agreement, the merger will not occur. A copy of the merger agreement is attached to this proxy statement as Annex A. This proxy statement and the enclosed form of proxy are first being mailed to our shareholders on or about , 2009.

Record Date and Quorum

The holders of record of our common stock as of the close of business on October 14, 2009, the record date for the special meeting, are entitled to receive notice of, and to vote at, the special meeting. On the record date, there were shares of our common stock outstanding.

Table of Contents

The holders of a majority of the outstanding shares of our common stock at the close of business on the record date represented in person or by proxy will constitute a quorum for purposes of the special meeting. A quorum is necessary to hold the special meeting. Once a share is represented at the special meeting, it will be counted for the purpose of determining a quorum at the special meeting and any postponement or adjournment of the special meeting. However, if a new record date is set for the adjourned special meeting, then a new quorum will have to be established.

Required Vote

The approval of the merger agreement requires the affirmative vote of the shares representing a majority of the outstanding shares entitled to vote at the special meeting. If you abstain from voting, either in person or by proxy, or do not instruct your broker or other nominee how to vote your shares, it will effectively count as a vote against the approval of the merger agreement. The approval of the proposal to adjourn the meeting, if necessary or appropriate, to solicit additional proxies requires (i) if a quorum exists, that the number of shares voted in favor of adjournment are greater than those voted against, or (ii) in the absence of a quorum, the affirmative vote of the holders of a majority of the shares of our common stock represented at the special meeting. If you abstain from voting, either in person or by proxy, or do not instruct your broker or other nominee how to vote your shares, (i) if a quorum is present, it will not affect the adjournment, if necessary or appropriate, to permit further solicitation of proxies or (ii) if a quorum is not present, then an abstention will have the same effect as a vote against this proposal.

Coconut Palm Proxy

On February 8, 2005, Coconut Palm purchased 5 million units (Units) in Sunair 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 per share with a term of three years which expired on February 7, 2008 and (iii) one warrant to purchase one share of our common stock at an exercise price of \$7 per share with a term of five years to expire on February 7, 2010. Coconut Palm obtained the \$25 million for its investment in Sunair by selling limited partnership interests to accredited investors. Following the closing of its initial investment on February 8, 2005, Coconut Palm beneficially owned 5 million shares, or approximately 55.46% of Sunair's then outstanding shares of common stock, exclusive of outstanding options and warrants. As of October 1, 2009, Coconut Palm beneficially owns 4,194,700 or 37.54% of Sunair's outstanding shares of common stock, exclusive of outstanding options and warrants.

Since its initial purchase of Sunair's Units on February 8, 2005 through the record date, Coconut Palm ha