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EARTHSHELL CORP  
Form S-1/A  
August 02, 2006

REGISTRATION NO. 333-131865

AS FILED WITH THE SECURITIES AND EXCHANGE COMMISSION ON AUGUST 2, 2006

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

AMENDMENT NO. 1  
TO  
FORM S-1

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933, AS AMENDED

| DELAWARE   | EARTHSHELL CORPORATION   | 77-0322379  |
|--|--|---|
| -----<br>(State or Other Jurisdiction of<br>Incorporation Our Charter)                                       | -----<br>(Name of Registrant in<br>or Organization)                        | -----<br>(I.R.S. Employer<br>Identification No.)  |
| <br>1301 YORK ROAD, SUITE 200<br>BALTIMORE, MARYLAND 21093<br>(410) 847-9420                                 | <br><br>2650   | <br>VINCENT J. TRUANT<br>1301 YORK ROAD, SUITE 200<br>BALTIMORE, MARYLAND 21093<br>(410) 847-9420 |
| -----<br>(Address and telephone number<br>of Principal Executive Offices<br>and Principal Place of Business) | -----<br>(Primary Standard<br>Industrial<br>Classification<br>Code Number) | -----<br>(Name, address and telephone<br>number of agent for service)                             |

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Approximate date of commencement of proposed sale to the public: As soon as practicable after this Registration Statement becomes effective.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the 1933 Act check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the 1933 Act, please check the following box and list the 1933 Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the 1933 Act, check the following box and list the 1933 Act registration statement number of the earlier effective registration statement for the same offering.

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If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box.

### CALCULATION OF REGISTRATION FEE

| TITLE OF EACH CLASS OF SECURITIES<br>TO BE REGISTERED | AMOUNT TO BE<br>REGISTERED           | PROPOSED<br>MAXIMUM<br>OFFERING PRICE<br>PER SHARE (1) | PROPOSED MAXIMUM<br>AGGREGATE<br>OFFERING PRICE (1) | AMOUNT<br>REGISTRATION<br>FEE (2) |
|---|--------------------------------------|--|---|-----------------------------------|
| Common Stock, par value \$0.01 per share              | 10,327,844<br>shares (2) (3)         | \$1.76   | \$18,177,005  | \$1,9                             |
| <b>TOTAL</b>  | <b>10,327,844<br/>shares (2) (3)</b> | <b>\$1.76</b>  | <b>18,177,005</b>                                   | <b>\$1,9</b>                      |

- (1) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(c) under the Securities Act of 1933, as amended. For the purposes of this table, we have used a recent closing price at January 17, 2006.
- (2) These shares consist of: (i) 6,700,000 shares which are being registered pursuant to the Purchase Agreement, dated December 30, 2005, with Cornell Capital Partners, (ii) 143,550 shares which have been issued to Cornell Capital Partners and 6,450 shares which have been issued to each of Sloan Securities Corporation and Crown Capital Investment, Inc. on or about March 23, 2005, in connection with a financing transaction, (iii) 1,295,000 shares underlying warrants, (iv) 1,909,727 shares being registered pursuant to various settlement arrangements, (v) 266,667 shares in connection with the EarthShell Asia Transaction.. The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until this Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.
- (3) The Company initially intended to register 10,327,844 shares of common stock in this registration statement. Since the Company's initial filing of this registration statement in January 2006, some of the selling stockholders have sold their shares prior to the filing of Amendment No. 1 to Form SB-2 and these shares are being removed from this registration statement; therefore the Company is registering 9,687,034 shares of common stock in this registration statement.
- (4) Registration fee has previously been paid.

PROSPECTUS

SUBJECT TO COMPLETION, DATED AUGUST 2, 2006

EARTHSHELL CORPORATION

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9,687,034 SHARES OF COMMON STOCK

This prospectus (this "Prospectus") relates to the registration of 9,687,034 shares of common stock of EarthShell Corporation ("EarthShell" or the "Company") by certain persons who are stockholders of the Company. The selling shareholders may not choose to sell all of the shares covered by this registration statement, or, under certain market conditions, may not be entitled to convert and sell all of the shares covered by their respective registration or conversion agreements. Please refer to "Selling Stockholders" beginning on page 16. EarthShell is not selling any shares of common stock in this offering and therefore will not receive any proceeds from this offering. All costs associated with this registration will be borne by the Company.

The shares of common stock associated with this offering are being offered for sale by certain persons who are selling stockholders at prices established on the Over-the-Counter Bulletin Board during the term of this offering. On July 21, 2006, the last reported market sale price of our common stock was \$2.20 per share. Our common stock is quoted on the Over-the-Counter Bulletin Board under the symbol "ERTH.OB". The price of our common stock will fluctuate based on the demand for the shares of common stock.

The selling stockholders consist of: (a) Cornell Capital Partners, who may sell up to 7,360,500 shares of common stock, consisting of: (i) 6,700,000 shares which may be issued from time to time upon the conversion of secured convertible debentures (the "Cornell Capital Debentures") acquired by Cornell Capital Partners pursuant to the Securities Purchase Agreement, dated December 30, 2005 (the "Purchase Agreement"), and (ii) 660,500 shares of common stock which may be issued upon the exercise of warrants issued on May 26, 2005, August 26, 2005 and December 30, 2005; (b) Sloan Securities Corporation, who may sell up to 6,450 shares of common stock which the Company issued on or about March 23, 2005, in connection with a financing transaction; (c) Highgate House Funds, Ltd., who may sell up to 364,500 shares of common stock which may be issued upon the exercise of a warrant issued on December 30, 2005; (d) SF Capital Partners Ltd., who may sell up to 1,000,000 shares of common stock upon the conversion of existing debt pursuant to a settlement arrangement; (e) 266,667 shares in connection with the EarthShell Asia Transaction, (f) other selling shareholders who may sell up to 418,917 shares of common stock previously issued by the Company and (g) additional selling stockholders, who may sell up to 270,000 shares of common stock upon the exercise of warrants previously issued by the Company.

Pursuant to the Purchase Agreement, the Company issued to Cornell Capital Partners the Cornell Capital Debentures, which shall be convertible into shares of the Company's common stock as set forth herein. The Company received proceeds equal to \$4,500,000 from the sale of the Cornell Capital Debentures on January 6, 2006. The Cornell Capital Debentures are secured by (i) a Pledge and Escrow Agreement, by and among the Company, Cornell Capital Partners, and David Gonzalez, Esq., (ii) an Insider Pledge Agreement and Escrow Agreement (the "IPEA"), by and among the Company, Cornell Capital Partners, David Gonzalez, Esq. and Mr. Benton Wilcoxon and (iii) an Amended and Restated Security Agreement, by and between the Company and Cornell Capital Partners. The Cornell Capital Debentures are secured by substantially all of the Company's assets, have a three (3) year term and accrue interest at twelve percent (12%) per annum. Beginning 60 days after the Securities and Exchange Commission ("SEC") declares the accompanying registration statement effective, Cornell Capital Partners is entitled, at its option, to convert and sell up to \$250,000 of the principal amount of the Cornell Capital Debentures, plus accrued interest, into shares of the Company's common stock, within any 30 day period at the lesser of (i) a price equal to \$3.00 or (ii) eighty-eight percent (88%) of the average of the two (2) lowest volume weighted average prices of the common stock during the ten (10) trading days immediately preceding the conversion date, as quoted by Bloomberg, LP. The conversion limitation of \$250,000 per month does not apply if

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the market price is greater than \$3.00 per share.

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The holder of the Cornell Capital Debentures may not convert the Cornell Capital Debentures or receive shares of the Company's common stock as payment of interest thereunder to the extent such conversion or receipt of such interest payment would result in the holder, together with any affiliate thereof, beneficially owning (as determined in accordance with Section 13(d) of the Securities Exchange Act of 1934, as amended, and the rules promulgated thereunder) in excess of 4.9% of the then issued and outstanding shares of common stock, including shares issuable upon conversion of, and payment of interest on, the Cornell Capital Debentures held by such holder after application of this 4.9% restriction. This 4.9% restriction may be waived by the holder (but only as to itself and not to any other holder) upon not less than sixty-five (65) days prior notice to the Company. The Company may redeem, with three (3) business days advance written notice to Cornell Capital Partners, a portion or all amounts outstanding under the Cornell Capital Debentures prior to the maturity date provided that the closing bid price of the of the Company's common stock, as reported by Bloomberg, LP, is less than \$3.00 at the time of the redemption notice. The Company shall pay an amount equal to the principal amount being redeemed plus a redemption premium equal to ten percent (10%) of the principal amount being redeemed, and accrued interest, to be delivered to the Cornell Capital Partners on the third (3rd) business day after the redemption notice, provided, however, this redemption premium does not apply until the outstanding principal balance of the Cornell Capital Debentures has been reduced by \$2.5 million. The amount that Cornell may convert in any 30 day period will be reduced by the amount that the Company redeems.

On July 12, 2006, the Company entered into a Letter Agreement with Cornell Capital Partners, pursuant to which Cornell Capital Partners has agreed to forbear from exercising certain rights and remedies under the Cornell Capital Debentures and that certain Registration Rights Agreement, of even date with the Cornell Capital Debentures in exchange for the issuance by the Company to Cornell Capital Partners of 250,000 shares of the Company's common stock.

The Company has acknowledged in the Agreement that an event of default under the Cornell Capital Debentures had occurred as of June 30, 2006 with the Company failing to timely register with the U.S. Securities and Exchange Commission the common stock underlying the Cornell Capital Debentures. The Company also acknowledged that Cornell Capital Partners is entitled to liquidated damages equal to one percent (1%) of the liquidated value of the Cornell Capital Partners for each thirty (30) day period after May 31, 2006. Pursuant to the Agreement, Cornell Capital Partners has agreed to waive the default, including all liquidated damages that may have accrued through the date of the Agreement and during the Forbearance Period (as defined below), in exchange for the 250,000 shares of common stock and the Company obtaining the effectiveness by September 30, 2006 of that certain Registration Statement originally filed with the U.S. Securities and Exchange Commission on February 14, 2006, which includes the shares of common stock underlying the Cornell Capital Debentures.

Furthermore, Cornell Capital Partners has agreed not to make any conversions under the Cornell Capital Debentures until the earlier of September 30, 2006 or the expiration of the Forbearance Period, which such Forbearance Period shall commence on the date of the execution of the Agreement and continue for so long as the Company strictly complies with the terms of the Agreement and there is no occurrence or existence of any event of default other than the Default under the transaction documents or any other agreement that the Company

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has entered into with Cornell Capital Partners. The 250,000 shares of common stock shall have piggy-back registration rights and Cornell Capital Partners shall also have the right to demand the registration of the 250,000 shares of common stock by providing to the Company with thirty (30) days prior written notice of such request.

In connection with the Purchase Agreement, on December 30, 2005, the Company issued to Cornell Capital Partners the December Warrant to purchase up to 350,000 shares of common stock. This December Warrant has an exercise price of \$4.00 per share, which may be adjusted as low as \$3 per share in the event the Company issues or sells any shares of its common stock for a consideration per share less than the exercise price for the December Warrant except for certain exclusions. The December Warrant expires two (2) years from the date it was issued. Furthermore, in connection with the Company's sale of Cornell Capital Debentures, the Company issued to Mr. Benton Wilcoxon, in consideration of his pledge of shares of common stock of Composite Technology Corporation pursuant to the terms of the IPEA, a warrant to purchase up to 125,000 shares of common stock. This warrant has an exercise price of \$4.00 per share and expires three (3) years from the date it was issued.

Brokers or dealers effecting transactions in these shares should confirm that the shares are registered under the applicable state law or that an exemption from registration is available.

These securities are speculative and involve a high degree of risk.

Please refer to "Risk Factors" beginning on page 8.

No underwriter or person has been engaged to facilitate the sale of shares of common stock in this offering. This offering will terminate twenty-four (24) months after the accompanying registration statement (the "Registration Statement") is declared effective by the "SEC". None of the proceeds from the sale of stock by the selling stockholders will be placed in escrow, trust or any similar account.

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THE INFORMATION IN THIS PROSPECTUS IS NOT COMPLETE AND MAY BE CHANGED. THE SELLING STOCKHOLDERS MAY NOT SELL THESE SECURITIES UNTIL THE REGISTRATION STATEMENT FILED WITH THE SEC IS EFFECTIVE. THIS PROSPECTUS IS NOT AN OFFER TO BUY THESE SECURITIES IN ANY STATE WHERE THE OFFER OR SALE IS NOT PERMITTED.

THE SEC AND STATE SECURITIES REGULATORS HAVE NOT APPROVED OR DISAPPROVED OF THESE SECURITIES, OR DETERMINED IF THIS PROSPECTUS IS TRUTHFUL OR COMPLETE. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

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### PROSPECTUS SUMMARY

The following is only a summary of the information, financial statements and the notes included in this Prospectus. You should read the entire Prospectus carefully, including "Risk Factors" and our financial statements and the notes to the financial statements before making any investment decision.

#### Our Company

EarthShell was organized in November 1992 to engage in the commercialization of proprietary composite material technology, designed with the environment in mind, for the manufacture of disposable packaging to be used in the foodservice industry. Current and future products include hinged-lid containers, plates, bowls, foodservice wraps, cups and cutlery (collectively, "EarthShell Packaging(R)"). EarthShell composite material is primarily made from abundantly available and low cost natural raw materials such as limestone and starch from annually renewable crops, such as corn and potatoes. The Company has determined that foodservice disposables made of this material should offer certain environmental benefits, will have performance characteristics, such as

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strength and rigidity, and it believes that it should be able to commercially produce and sell these products at prices that are competitive with comparable conventional paper and plastic foodservice disposables.

The Company's objective is to establish EarthShell Packaging(R) as the preferred disposable packaging material for the foodservice industry throughout the world based on comparable performance, environmental superiority and competitive pricing. EarthShell's approach for achieving this objective has been to: (i) license the EarthShell technology to strategically selected manufacturing or operating partners to manufacture, market, distribute and sell EarthShell Packaging(R); (ii) demonstrate customer acceptance and demand for EarthShell Packaging(R) through key market leaders and environmental groups; and (iii) demonstrate the manufacturability and improved economics with initial strategic partners.

To date, the Company has licensed the technology to certain carefully selected partners who are working to commercialize the technology. The Company currently has three active licensees: one in the United States, one in Mexico and one in Asia. In cooperation with its licensing partners, more than 50,000,000 units of EarthShell Packaging, including plates, bowls and sandwich containers have been manufactured and sold to key customers within a variety of market segments in order to demonstrate commercial product quality, customer acceptance and demand. The Company has received support for its environmental claims from a number of governmental and non-environmental organizations. In addition, the Company has worked with a machinery manufacturer who has developed turn-key manufacturing machinery for EarthShell plates and bowls. The Company's primary focus is now on supporting its licensee in the United States, Renewable Products Inc. ("RPI"), who has put in place a commercial production facility and is commencing manufacturing and distribution operations. The Company expects to acquire RPI in the near future, thereby bringing manufacturing capability in house. In addition, the Company is supporting its Mexican licensee in acquiring and putting into service manufacturing capacity to serve the Mexican market. Finally, the Company has entered into various license agreements with EarthShell Asia, an Asian licensee, to demonstrate and to exploit a new aspect of the EarthShell technology.

### Going Concern

The condensed consolidated financial statements have been prepared on a going concern basis, which contemplates the realization of assets and the satisfaction of liabilities in the normal course of business. The Company has incurred significant losses since inception, has minimal revenues and has a working capital deficit of \$7.5 million as of March 31, 2006. These factors, along with others, may indicate that the Company will be unable to continue as a going concern for a period of twelve (12) months or less. The Company will have to raise additional funds to meet its current obligations and to cover operating expenses through the year ending December 31, 2006. If the Company is not successful in raising additional capital, it may not be able to continue as a going concern for a period of 12 months or less. Management plans to address this need by raising cash through either the issuance of debt or equity securities.

### Recent Developments

On or about June 1, 2006, the Company issued a total of 160,000 shares of common stock to two individuals in connection with the termination of a license agreement, mutual release, and settlement of claims between the parties. This issuance was made in reliance upon the exemption from registration provided for by Rule 506 of Regulation D and alternatively Section 4(2) of the Act. The Company did not offer or sell any of the securities issued by any form of

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general solicitation or general advertising and affixed a legend on the certificates representing the Series D Preferred Stock and the Warrants, stating that the securities have not been registered under the Act and referring to the restrictions on transferability and sale of such securities.

On July 28, 2006, the Company entered into a Loan and Mutual Release Agreement (the "Agreement") with E. Khashoggi Industries, LLC ("EKI"), the Company's largest stockholder. Pursuant to the Agreement, EKI advanced \$350,000 directly to the Company and an additional \$150,000 to a law firm on behalf of the Company to cover legal fees related to patent renewals. The Agreement also contains mutual releases of any and all claims, known or unknown, which the respective parties may have through the date of the Agreement under existing license, debt conversion and service agreements. The Company executed and delivered two Promissory Notes to EKI on July 28, 2006; one in the amount of \$350,000 and the other in the amount of \$150,000. Interest accrues on the principal balance of the \$350,000 note at a variable per annum rate, as of any date of determination, that is equal to the rate published in the "Money Rates" section of The Wall Street Journal as being the "Prime Rate", compounded monthly. The \$150,000 note is non-interest bearing. All accrued but unpaid interest and outstanding principal under the notes is due and payable on the earliest to occur of the following: (i) the second anniversary of the date of the note; (ii) five days following the date the Company has received \$3.0 million or more in aggregate net cash proceeds from all financing transactions, equity contributions, and transactions relating to the sale, licensing, sublicensing or disposition of assets or the provision of services (including advance royalty payments, proceeds from the sale of the Company's common stock and fees for technological services rendered to third parties), occurring subsequent to the date of the notes.

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On June 21, 2006, the Company entered into a Securities Purchase Agreement (the "SPA") by and among the Company and certain investors named therein (the "Investors") pursuant to which the Company sold an aggregate of 128,205 shares of Series D convertible preferred stock (the "Series D Preferred Stock") for a total purchase price of \$500,000. The Series D Preferred Stock, which was sold to the Investors in a private offering, pays a cumulative 20% annual dividend, which shall be paid on conversion or liquidation of the Company. The Series D Preferred Stock is callable in certain circumstances by the Company. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company, the holders of the Series D Preferred Stock will be entitled to receive, prior and in preference to any distribution of the assets or surplus funds of the Company to the holders of any shares of common stock by reason of the ownership thereof, an amount equal to the Liquidation Value of \$3.90 per share and any accrued dividends. Each share of Series D Preferred Stock is convertible into one share of the Company's common stock, par value \$0.01 per share, subject to adjustment. In order to (i) effect an amendment of the Company's Certificate of Incorporation or By-Laws (except to increase the number of directors), (ii) issue, or permit any Subsidiaries to issue, any additional shares of capital stock or other equity interests at less than Fair Market Value, or (iii) change the Company's business or business model, the affirmative vote of the holders of at least seventy-five percent (75%) of the then outstanding shares of Series D Preferred Stock must first be obtained.

In connection with the issuance and sale of the Series D Preferred Stock, the Company granted the Investors immediately exercisable warrants to purchase an aggregate of 555,555 shares of the Company's common stock at an exercise price of \$3.90 per share, subject to adjustment (the "Warrants"). The Investors also have been granted certain registration rights with respect to the shares of common stock underlying the Series D Preferred Stock and the Warrants as set



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forth in Section 3 of the SPA.

On July 12, 2006, the Company entered into a Letter Agreement with Cornell Capital Partners, pursuant to which Cornell Capital Partners has agreed to forbear from exercising certain rights and remedies under the Cornell Capital Debentures and that certain Registration Rights Agreement, of even date with the Cornell Capital Debentures in exchange for the issuance by the Company to Cornell Capital Partners of 250,000 shares of the Company's common stock.

The Company has acknowledged in the Agreement that an event of default under the Cornell Capital Debentures had occurred as of June 30, 2006 with the Company failing to timely register with the U.S. Securities and Exchange Commission the common stock underlying the Cornell Capital Debentures. The Company also acknowledged that Cornell Capital Partners is entitled to liquidated damages equal to one percent (1%) of the liquidated value of the Cornell Capital Partners for each thirty (30) day period after May 31, 2006. Pursuant to the Agreement, Cornell Capital Partners has agreed to waive the default, including all liquidated damages that may have accrued through the date of the Agreement and during the Forbearance Period (as defined below), in exchange for the 250,000 shares of common stock and the Company obtaining the effectiveness by September 30, 2006 of that certain Registration Statement originally filed with the U.S. Securities and Exchange Commission on February 14, 2006, which includes the shares of common stock underlying the Cornell Capital Debentures.

Furthermore, Cornell Capital Partners has agreed not to make any conversions under the Cornell Capital Debentures until the earlier of September 30, 2006 or the expiration of the Forbearance Period, which such Forbearance Period shall commence on the date of the execution of the Agreement and continue for so long as the Company strictly complies with the terms of the Agreement and there is no occurrence or existence of any event of default other than the Default under the Cornell Capital Debenture transaction documents or any other agreement that the Company has entered into with Cornell Capital Partners. The 250,000 shares of common stock shall have piggy-back registration rights and Cornell Capital Partners shall also have the right to demand the registration of the 250,000 shares of common stock by providing to the Company with thirty (30) days prior written notice of such request.

### About Us

Our principal executive offices are located at 1301 York Road, Suite 200, Baltimore, Maryland 21093. Our telephone number is (410) 847-9420. The address of our website is [www.earthshell.com](http://www.earthshell.com). Information on our website is not part of this Prospectus.

### THE OFFERING

(1) Cornell Capital Partners, who may sell up to 7,360,500 shares of common stock, consisting of: (i) 6,700,000 shares which may be issued from time to time upon the conversion of secured convertible debentures (the "Cornell Capital Debentures") acquired by Cornell Capital Partners pursuant to the Securities Purchase Agreement, dated December 30, 2005 (the "Purchase Agreement"), and (ii) 660,500 shares of common stock which may be issued upon the exercise of warrants 260,500 of which were issued on May 26, 2005, 50,000 of

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which were issued on August 26, 2005 and 350,000 of which were issued December 30, 2005;

(2) Sloan Securities Corporation, who may sell up to 6,450 shares of common stock which the Company issued on or about March 23, 2005, in connection with a financing transaction;

(3) Highgate House Funds, Ltd., who may sell up to 364,500 shares of common stock which may be issued upon the exercise of a warrant issued on December 30, 2005;

(4) SF Capital Partners Ltd., who may sell up to 1,000,000 shares of common stock upon the conversion of existing debt pursuant to a settlement arrangement;

(5) 266,667 shares in connection with the EarthShell Asia Transaction,

(6) other selling shareholders who may sell up to 916,177 shares of common stock previously issued by the Company and

(7) additional selling stockholders, who may sell up to 270,000 shares of common stock upon the exercise of warrants previously issued by the Company.

Pursuant to the Purchase Agreement, the Company issued to Cornell Capital Partners the Cornell Capital Debentures, which shall be convertible into shares of the Company's common stock as set forth herein. The Company received proceeds equal to \$4,500,000 from the sale of the Cornell Capital Debentures on January 6, 2006. The Cornell Capital Debentures are secured by (i) a Pledge and Escrow Agreement, by and among the Company, Cornell Capital Partners, and David Gonzalez, Esq., (ii) an Insider Pledge Agreement and Escrow Agreement (the "IPEA"), by and among the Company, Cornell Capital Partners, David Gonzalez, Esq. and Mr. Benton Wilcoxon and (iii) an Amended and Restated Security Agreement, by and between the Company and Cornell Capital Partners. The Cornell Capital Debentures are secured by substantially all of the Company's assets, have a three (3) year term and accrue interest at twelve percent (12%) per annum. Beginning 60 days after the Securities and Exchange Commission ("SEC") declares the accompanying registration statement effective, Cornell Capital Partners is entitled, at its option, to convert and sell up to \$250,000 of the principal amount of the Cornell Capital Debentures, plus accrued interest, into shares of the Company's common stock, within any 30 day period at the lesser of (i) a price equal to \$3.00 or (ii) eighty-eight percent (88%) of the average of the two (2) lowest volume weighted average prices of the common stock during the ten (10) trading days immediately preceding the conversion date, as quoted by Bloomberg, LP. The conversion limitation of \$250,000 per month does not apply if the market price is greater than \$3.00 per share.

The holder of the Cornell Capital Debentures may not convert the Cornell Capital Debentures or receive shares of the Company's common stock as payment of interest thereunder to the extent such conversion or receipt of such interest payment would result in the holder, together with any affiliate thereof, beneficially owning (as determined in accordance with Section 13(d) of the Securities Exchange Act of 1934, as amended, and the rules promulgated thereunder) in excess of 4.9% of the then issued and outstanding shares of common stock, including shares issuable upon conversion of, and payment of interest on, the Cornell Capital Debentures held by such holder after application of this 4.9% restriction. This 4.9% restriction may be waived by the holder (but only as to itself and not to any other holder) upon not less than sixty-five (65) days prior notice to the Company.

The Company may redeem, with three (3) business days advance written notice to Cornell Capital Partners, a portion or all amounts outstanding under the Cornell Capital Debentures prior to the maturity date provided that the

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closing bid price of the of the Company's common stock, as reported by Bloomberg, LP, is less than \$3.00 at the time of the redemption notice. The Company shall pay an amount equal to the principal amount being redeemed plus a redemption premium equal to ten percent (10%) of the principal amount being redeemed, and accrued interest, to be delivered to the Cornell Capital Partners on the third (3rd) business day after the redemption notice, provided, however, this redemption premium does not apply until the outstanding principal balance of the Cornell Capital Debentures has been reduced by \$2.5 million. The amount that Cornell may convert in any 30 day period will be reduced by the amount that the Company redeems.

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On July 12, 2006, the Company entered into a Letter Agreement with Cornell Capital Partners, pursuant to which Cornell Capital Partners has agreed to forbear from exercising certain rights and remedies under the Cornell Capital Debentures and that certain Registration Rights Agreement, of even date with the Cornell Capital Debentures in exchange for the issuance by the Company to Cornell Capital Partners of 250,000 shares of the Company's common stock.

The Company has acknowledged in the Agreement that an event of default under the Cornell Capital Debentures had occurred as of June 30, 2006 with the Company failing to timely register with the U.S. Securities and Exchange Commission the common stock underlying the Cornell Capital Debentures. The Company also acknowledged that Cornell Capital Partners is entitled to liquidated damages equal to one percent (1%) of the liquidated value of the Cornell Capital Partners for each thirty (30) day period after May 31, 2006. Pursuant to the Agreement, Cornell Capital Partners has agreed to waive the default, including all liquidated damages that may have accrued through the date of the Agreement and during the Forbearance Period (as defined below), in exchange for the 250,000 shares of common stock and the Company obtaining the effectiveness by September 30, 2006 of that certain Registration Statement originally filed with the U.S. Securities and Exchange Commission on February 14, 2006, which includes the shares of common stock underlying the Cornell Capital Debentures.

Furthermore, Cornell Capital Partners has agreed not to make any conversions under the Cornell Capital Debentures until the earlier of September 30, 2006 or the expiration of the Forbearance Period, which such Forbearance Period shall commence on the date of the execution of the Agreement and continue for so long as the Company strictly complies with the terms of the Agreement and there is no occurrence or existence of any event of default other than the Default under the Cornell Capital Debenture transaction documents or any other agreement that the Company has entered into with Cornell Capital Partners. The 250,000 shares of common stock shall have piggy-back registration rights and Cornell Capital Partners shall also have the right to demand the registration of the 250,000 shares of common stock by providing to the Company with thirty (30) days prior written notice of such request.

In connection with the Purchase Agreement, on December 30, 2005, the Company issued to Cornell Capital Partners the December Warrant to purchase up to 350,000 shares of common stock. This December Warrant has an exercise price of \$4.00 per share, which may be adjusted to as low as \$3 per share in the event the Company issues or sells any shares of its common stock for a consideration per share less than the exercise price of the December Warrant except for certain exclusions. The December Warrant and expires two (2) years from the date it was issued. Furthermore, in connection with the Company's sale of Cornell Capital Debentures, the Company issued to Mr. Benton Wilcoxon, in consideration of his pledge of shares of common stock of Composite Technology Corporation

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pursuant to the terms of the IPEA, a warrant to purchase up to 125,000 shares of common stock. This warrant has an exercise price of \$4.00 per share and expires three (3) years from the date it was issued.

|   |  |
|---|--|
| Common Stock Offered                            | 9,687,034 shares by the selling stockholders   |
| Offering Price                                  | Market price   |
| Common Stock Outstanding Before the Offering(1) | 20,095,190 shares as of July 21, 2006  |
| Use of Proceeds                                 | We will not receive any proceeds of the shares offered by the selling stockholders. We did, however, receive proceeds on January 6, 2006 equal to \$4,500,000 from the sale of the Cornell Capital Debentures pursuant to the Purchase Agreement with Cornell Capital Partners. Any proceeds we receive from the sale of common stock under the warrants will be used for general working capital purposes. See "Use of Proceeds". |
| Risk Factors                                    | The securities offered hereby involve a high degree of risk and immediate substantial dilution. See "Risk Factors" and "Dilution".   |
| Over-the-Counter Bulletin Board Symbol          | ERTH.OB  |

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- (1) Excludes up to 6,700,000 which may be issued to Cornell Capital Partners upon the conversion of the Cornell Capital Debentures pursuant to the Purchase Agreement, up to 1,295,000 shares issuable upon the exercise of warrants, and 1,000,000 shares being registered pursuant to a settlement arrangement.

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### SUMMARY FINANCIAL DATA

The following selected financial data have been derived from the Company's consolidated financial statements which have been audited by Farber Hass Hurley & McEwen LLP as of and for the years ended December 31, 2005, 2004, 2003 and 2002 and by Deloitte & Touche LLP for the year ended December 31, 2001. The following data should be read in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations" in this Prospectus and in the Consolidated Financial Statements and Notes thereto included in this Prospectus.

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(Dollars in thousands, except per share data)

| Statement of Operations<br>Data                         | For the<br>Year Ended<br>December 31, | For the<br>Year Ended<br>December 31, | For the<br>Year Ended<br>December 31, | For the<br>Year Ended<br>December 31, | For the<br>Year Ended<br>December |
|---|---------------------------------------|---------------------------------------|---------------------------------------|---------------------------------------|-----------------------------------|
|   | 2005                                  | 2004                                  | 2003                                  | 2002                                  | 2001                              |
| Revenues  | \$ 183                                | \$ 138                                | \$ --                                 | \$ --                                 | \$ --                             |
| Research and<br>development expenses                    | 201                                   | 1,170                                 | 9,547                                 | 26,890                                | 47,100                            |
| General and<br>administrative<br>expenses               | 5,485                                 | 3,749                                 | 5,786                                 | 9,590                                 | 9,600                             |
| Depreciation and<br>amortization                        | 3                                     | 42                                    | 380                                   | 3,099                                 | 5,800                             |
| Gain on sale of<br>property and equipment               | (23)                                  | (168)                                 | (452)                                 | (441)                                 | --                                |
| Interest expenses<br>(income), net                      | 696                                   | 1,068                                 | 1,791                                 | 132                                   | (300)                             |
| Related party patent<br>expenses                        | --                                    | --                                    | --                                    | --                                    | --                                |
| Other expense (income)                                  | --                                    | 1,532                                 | 1,464                                 | 321                                   | --                                |
| Net loss  | 6,179                                 | 7,257                                 | 18,517                                | 39,591                                | 62,300                            |
| Average shares<br>outstanding                           | 18,503                                | 15,047                                | 13,267                                | 11,277                                | 9,300                             |
| Per Common Share Basic<br>and diluted loss per<br>share | \$ 0.33                               | \$ 0.48                               | \$ 1.40                               | \$ 3.51                               | \$ 6.60                           |

(Dollars in thousands, except per share data)

| Balance Sheet Data                                 | For the<br>Year Ended<br>December 31, | For the<br>Year Ended<br>December 31, | For the<br>Year Ended<br>December 31, | For the<br>Year Ended<br>December 31, | For the<br>Year Ended<br>December 31, |
|--|---------------------------------------|---------------------------------------|---------------------------------------|---------------------------------------|---------------------------------------|
|  | 2005                                  | 2004                                  | 2003                                  | 2002                                  | 2001                                  |
| Cash and cash<br>equivalents                       | \$ 348                                | \$ 272                                | \$ 1,902                              | \$ 111                                | \$ 828                                |
| Total current assets                               | 431                                   | --                                    | --                                    | --                                    | --                                    |
| Total assets                                       | 443                                   | 483                                   | 2,287                                 | 18,024                                | 19,886                                |
| Total current<br>liabilities                       | 11,890                                | 7,763                                 | 10,148                                | 21,497                                | 8,350                                 |
| Total long-term<br>obligations                     | 905                                   | 1,475                                 | 4,408                                 | --                                    | --                                    |
| Deficit accumulated<br>during development<br>stage | (327,787)                             | (321,608)                             | (314,351)                             | (295,834)                             | (256,243)                             |
| Stockholders' equity<br>(deficit)                  | (12,352)                              | (8,755)                               | (12,269)                              | (3,473)                               | 11,536                                |
| Shares outstanding                                 | 18,981                                | 18,235                                | 14,129                                | 12,055                                | 9,860                                 |

## SUPPLEMENTARY FINANCIAL INFORMATION

The following table presents EarthShell Corporation and Subsidiaries condensed operating results for each of the ten (10) fiscal quarters through the period ended March 31, 2006. The information for each of these quarters is unaudited. In the opinion of management, all necessary adjustments, which consist only of normal and recurring accruals, have been included to fairly present the unaudited quarterly results. This data should be read together with EarthShell Corporation and Subsidiaries consolidated financial statements and the notes thereto, and Management's Discussions and Analysis of Financial Condition and Results of Operations.

|   | THREE (3) MONTHS ENDED (IN THOUSANDS) |                 |                  |                 |                 |                 |                 |
|---|---------------------------------------|-----------------|------------------|-----------------|-----------------|-----------------|-----------------|
|   | Mar 31,<br>2006                       | DEC 31,<br>2005 | SEPT 30,<br>2005 | JUN 30,<br>2005 | MAR 31,<br>2005 | DEC 31,<br>2004 | SEP 30,<br>2004 |
| Revenues  | \$ 25                                 | \$ 25           | \$ 25            | \$ 58           | \$ 75           | \$ 63           | \$ 50           |
| Net income<br>(loss)                              | (1,191)                               | (1,346)         | (1,894)          | (1,861)         | (1,078)         | (1,280)         | (1,646)         |
| Net income<br>(loss) per share:                   |                                       |                 |                  |                 |                 |                 |                 |
| Basic   | .06                                   | .07             | 0.10             | 0.10            | 0.06            | 0.07            | 0.12            |
| Diluted   | .06                                   | .07             | 0.10             | 0.10            | 0.06            | 0.07            | 0.12            |
| Shares used in<br>computing per share<br>amounts: |                                       |                 |                  |                 |                 |                 |                 |
| Basic   | 19,303                                | 18,853          | 18,508           | 18,395          | 18,250          | 17,659          | 14,223          |
| Diluted   | 19,303                                | 18,853          | 18,508           | 18,395          | 18,250          | 17,659          | 14,223          |

## RISK FACTORS

We are subject to various risks that may materially harm our business, financial condition and results of operations. You should carefully consider the risks and uncertainties described below and the other information in this filing before deciding to purchase our common stock. If any of these risks or uncertainties actually occurs, our business, financial condition or operating results could be materially harmed. In that case, the trading price of our common stock could decline and you could lose all or part of your investment.

Risks Related To Our Business

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Our obligations under the Cornell Capital Debentures are secured by substantially all of our assets which could cause our operations to cease if we default

Our obligations under the \$4.5 million of secured convertible debentures (the "Cornell Capital Debentures"), issued to Cornell Capital Partners on December 30, 2005 are secured by substantially all of our assets. As a result, if we default under the terms of the Cornell Capital Debentures, Cornell Capital Partners could foreclose its security interest and liquidate substantially all of our assets. This would cause us to cease operations.

On July 12, 2006, the Company entered into a Letter Agreement with Cornell Capital Partners, pursuant to which Cornell Capital Partners has agreed to forbear from exercising certain rights and remedies under the Cornell Capital Debentures and that certain Registration Rights Agreement, of even date with the Cornell Capital Debentures in exchange for the issuance by the Company to Cornell Capital Partners of 250,000 shares of the Company's common stock.

The Company has acknowledged in the Agreement that an event of default under the Cornell Capital Debentures had occurred as of June 30, 2006 with the Company failing to timely register with the U.S. Securities and Exchange Commission the common stock underlying the Cornell Capital Debentures. The Company also acknowledged that Cornell Capital Partners is entitled to liquidated damages equal to one percent (1%) of the liquidated value of the Cornell Capital Partners for each thirty (30) day period after May 31, 2006. Pursuant to the Agreement, Cornell Capital Partners has agreed to waive the default, including all liquidated damages that may have accrued through the date of the Agreement and during the Forbearance Period (as defined below), in exchange for the 250,000 shares of common stock and the Company obtaining the effectiveness by September 30, 2006 of that certain Registration Statement originally filed with the U.S. Securities and Exchange Commission on February 14, 2006, which includes the shares of common stock underlying the Cornell Capital Debentures.

Furthermore, Cornell Capital Partners has agreed not to make any conversions under the Cornell Capital Debentures until the earlier of September 30, 2006 or the expiration of the Forbearance Period, which such Forbearance Period shall commence on the date of the execution of the Agreement and continue for so long as the Company strictly complies with the terms of the Agreement and there is no occurrence or existence of any event of default other than the Default under the Cornell Capital Debenture transaction documents or any other agreement that the Company has entered into with Cornell Capital Partners. The 250,000 shares of common stock shall have piggy-back registration rights and Cornell Capital Partners shall also have the right to demand the registration of the 250,000 shares of common stock by providing to the Company with thirty (30) days prior written notice of such request.

We have a limited operating history upon which you can evaluate our business

Although the Company earned its first revenues in 2004 and is no longer classified as a "developmental stage company", it has limited operating history, therefore, it remains subject to the inherent challenges and risks of establishing a new business enterprise. The Company may not be successful in addressing such risks. The limited operating history of the Company makes the prediction of future results of operations difficult or impossible. To date, production volumes of EarthShell Packaging products have been low relative to intended and necessary capacity of the manufacturing lines.

The initial plates, bowls, and sandwich containers that were sold commercially were produced on lab equipment, pilot machinery, or first

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generation commercial equipment. Although we have produced and sold 40-50 million pieces, the commercial equipment envisioned by the Company that will allow for the manufacturing to be done profitably needed to be operated at higher speeds and good part throughput rates than was experienced during the early stages of production. Ultimately the Company discontinued production using the pilot and first generation equipment to allow Detroit Tool and Engineering Company ("DTE") to finish the machinery development to achieve the commercial levels of quality and throughput.

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As of December 31, 2005, the first modules of DTE equipment have been purchased by ReNewable Products, Inc. ("RPI"), as EarthShell's U.S. licensee, and are operational at commercial throughput rates. Production and distribution has begun and commercial quality product is beginning to be re-introduced into the market.

The success of future operations depends upon the ability of RPI and other licensees to manufacture and sell EarthShell Packaging Products in sufficient quantities so as to be commercially feasible and then to distribute and sell those products at competitive prices. While commercial manufacturing operations by RPI have commenced and RPI is selling EarthShell plates and bowls in the market place at prices that appear to be competitive, full production capacity utilization necessary to reach manufacturing profitability has not yet been achieved, and the sales have not occurred over a sufficient period of time to assure broad market acceptance. As a result of the foregoing factors, the Company expects to incur losses for at least the next 12 months and, depending on the success of the Company's products and services in the marketplace, for potentially an even longer period.

We have a working capital deficit of \$7.5 million as of March 31, 2006, which means that our current assets at were not sufficient to satisfy our current liabilities on that date

For the year ended December 31, 2005, the Company had reported operating revenues of \$0.2 million and an aggregate net loss of approximately \$6.2 million. For the year ended December 31, 2004, the Company had reported operating revenues of \$0.1 million and an aggregate net loss of approximately \$7.3 million. For the three months ended March 31, 2006, the Company had reported operating revenues of \$0.025 million and an aggregate net loss of approximately \$1.2 million. Although the Company hopes to achieve break-even cash flow by the end of 2006, the Company does not expect to operate profitably during the current fiscal year. Although the Company is actively seeking equity financing to restructure the debt on its balance sheets and to meet its operating and capital needs, additional funding may not be available to the Company, and, even if it is available, such financing may be (i) extremely costly, (ii) dilutive to existing stockholders and/or (iii) restrictive to the Company's ongoing operations. If the Company is unable to obtain such additional capital, the Company may be required to reduce the scope of its anticipated expansion, which could adversely affect the Company's business, financial condition and results of operations or cease operations.

We are the subject of a "Going Concern" Opinion from our Independent Auditors

The consolidated financial statements have been prepared on a going concern basis, which contemplates the realization of assets and the satisfaction of liabilities in the normal course of business. The Company has incurred significant losses since inception, has minimal revenues and has a working



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capital deficit of \$7.5 million as of March 31, 2006. These factors, along with others, raise substantial doubt as to whether the Company will be able to continue as a going concern for a period of twelve months or less. The Company will have to raise additional funds to meet its current obligations and to cover operating expenses through the year ending December 31, 2006. If the Company is not successful in raising additional capital, it may not be able to continue as a going concern for a period of twelve months or less.

Management has identified the following material weaknesses in the Company's internal controls over financial reporting:

- o The Company has inadequate segregation of critical duties within each of its accounting processes and a lack of sufficient monitoring controls over these processes to mitigate this risk. The responsibilities assigned to one employee include maintaining the vendor master file, processing payables, creating and voiding checks, reconciling bank accounts, making bank deposits and processing payroll.
- o There are weaknesses in the Company's information technology controls which make the Company's financial data vulnerable to error or fraud. Specifically, there is a lack of documentation regarding the roles and responsibilities of the IT function, lack of security management and monitoring and inadequate segregation of duties involving IT functions.
- o The departure of the Company's Controller in November 2004 resulted in the accounting and reporting functions being centralized under the Chief Financial Officer, with no additional personnel in the Company having an adequate knowledge of accounting principles and practices throughout most of 2005. In addition, the Company relocated its headquarters and accounting systems from Santa Barbara, CA to Baltimore, MD in late 2005. As a result, some transactions were not recorded in a timely manner and adjustments to the financial statements were recorded that were considered material to the financial position at December 31, 2005 and results of operations for the year then ended.

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The Company has begun taking remediation steps to enhance its internal control over financial reporting and reduce control deficiencies in general, including the material weaknesses enumerated above. In the 4th Quarter 2005, the Company employed a new Controller, CPA, with 15 years' experience in public and private accounting. The new Controller is in the process of developing revised accounting systems and procedures that will strengthen the Company's controls over financial reporting. The Company has hired an additional accounting employee as of March 30, 2006.

We need additional capital to finance our operating deficit and to fund capital requirements

For the year ended December 31, 2005, the Company had reported operating revenues of \$0.2 million and an aggregate net loss of approximately \$6.2 million. For the three months ended March 31, 2006, the Company had reported operating revenues of \$0.025 million and an aggregate net loss of approximately \$1.2 million. Although the Company hopes to achieve break-even cash flow by the end of 2006, the Company does not expect to operate profitably during this fiscal year. Although the Company is actively seeking equity financing to

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restructure the debt on its balance sheets and to meet its operating and capital needs, additional funding may not be available to the Company, and, even if it is available, such financing may be (i) extremely costly, (ii) dilutive to existing stockholders and/or (iii) restrictive to the Company's ongoing operations. If the Company is unable to obtain such additional capital, the Company may be required to reduce the scope of its anticipated expansion, which could adversely affect the Company's business, financial condition and results of operations or cease operations.

Our Common Stock is deemed to be a "Penny Stock," which may make it more difficult for stockholders to sell their shares

The Company's common stock is no longer traded on the NASDAQ Small Cap Market. SEC regulations generally define a "penny stock" to be any non-NASDAQ equity security that has a market price of less than \$5.00 per share, subject to certain exceptions. Based upon the price of EarthShell common stock as currently traded, EarthShell common stock is subject to Rule 15c-2 under the Securities and Exchange Act of 1934 which imposes additional sales practice requirements on broker-dealers which sell securities to persons other than established customers and "accredited investors." For transactions covered by this rule, a broker-dealer must make a special suitability determination for the purchaser and have received a purchaser's written consent to the transaction prior to sale. Consequently, this rule may have a negative effect on the ability of stockholders to sell common shares of the Company in the secondary market.

We are dependent on our licensees, which could have a material adverse effect on our business

The Company's current business model is to license the manufacturing and distribution of EarthShell Packaging foodservice disposables to licensees. Agreements with the licensees permit them to manufacture and sell other foodservice disposable packaging products that are not based on EarthShell Packaging. The licensees may also manufacture paper or polystyrene packaging which could compete with EarthShell products, and they may not devote sufficient resources or otherwise be able successfully to manufacture, distribute or market EarthShell Packaging. Their failure to do so would be grounds for termination of exclusivity provisions in their license agreement, but might also delay the rollout of EarthShell Packaging into the marketplace, which could have an adverse affect on our business.

We have not yet fully evaluated all of the EarthShell Packaging products and it is possible that some of the products may not perform as well as conventional packaging products

Although we believe that we can engineer EarthShell Packaging products to meet many of the critical performance requirements for specific applications, individual products may not perform as well as conventional foodservice disposables; for example, some consumers may prefer clear cups and clear lids on take-home containers which are not available with our foam technology. We are still developing many of our EarthShell Packaging products and we have not yet evaluated the performance of all of them. If we fail to develop EarthShell Packaging products that perform comparably to conventional foodservice disposables, this could cause consumers to prefer our competitors' products.

Established manufacturers in the foodservice disposables industry could improve their ability to recycle their existing products or develop new environmentally preferable disposable foodservice containers, which could render

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our technology obsolete and could negatively impact our ability to compete

Competition among existing food and beverage container manufacturers in the foodservice industry is intense. Virtually all of the key participants in the industry have substantially greater financial and marketing resources at their disposal than we do, and many have well-established supply, production and distribution relationships and channels. Companies producing competitive products utilizing competitive materials may reduce their prices or engage in advertising or marketing campaigns designed to protect their respective market shares and impede market acceptance of EarthShell Packaging products. In addition, some of the Company's licensees and joint venture partners manufacture paper, plastic or foil packaging that may compete with EarthShell Packaging products. Several paper and plastic disposable packaging manufacturers and converters and others have made efforts to increase the recycling of these products. Increased recycling of paper and plastic products could lessen their harmful environmental impact, one major basis upon which the Company intends to compete. A number of companies have introduced or are attempting to develop biodegradable starch-based materials, plastics, or other materials that may be positioned as potential environmentally superior packaging alternatives. We expect that many existing packaging manufacturers may actively seek competitive alternatives to our products and processes. The development of competitive, environmentally attractive, disposable foodservice packaging, whether or not based on our products and technology, could render our technology obsolete and could impair our ability to compete, which would have an adverse effect on our business, financial condition and results of operations.

Our anticipated international revenues are subject to risks inherent in international business activities

We expect sales of our products and services in foreign countries to account for a material portion of our revenues. These sales are subject to risks inherent in international business activities, including:

- o any adverse change in the political or economic environments in these countries;
- o economic instability;
- o any adverse change in tax, tariff and trade or other regulations;
- o the absence or significant lack of legal protection for intellectual property rights;
- o exposure to exchange rate risk for revenues which are denominated in currencies other than U.S. dollars; and
- o difficulties in managing joint venture businesses spread over various jurisdictions.

Our revenues could be substantially less than we expect if these risks affect our ability to successfully sell our products in the international market.

Our products may be perceived poorly by customers and/or environmental groups, which could have an adverse affect on our business

Our success depends substantially on our ability to design and develop foodservice disposables that are not as harmful to the environment as conventional disposable foodservice containers made from paper, plastic and polystyrene. EarthShell has used a life cycle inventory methodology in its environmental assessment of EarthShell Packaging products and in the development of associated environmental claims, and we have received support for the

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EarthShell concept from a number of environmental groups. Although we believe that EarthShell Packaging products offer several environmental advantages over conventional packaging products, our products may also possess characteristics that consumers or some environmental groups could perceive as negative for the environment. In particular, EarthShell Packaging products may result in more solid waste by weight and, in a dry environment, by volume, and manufacturing them may release greater amounts of some pollutants and lesser amounts of other pollutants than occurs with conventional packaging. Whether, on balance, EarthShell Packaging products are better for the environment than conventional packaging products is a somewhat subjective judgment. Environmental groups, regulators, customers or consumers may not agree that present and future EarthShell Packaging products have an environmental advantage over conventional packaging.

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Third parties may infringe the patents that we license, new products that we develop may not be covered by our licensed patents and we could suffer an adverse determination in a patent infringement proceeding, which could allow our competitors to duplicate our products without having incurred the research and development costs we have incurred and therefore allow them to produce and market those products more profitably

Our ability to compete effectively with conventional packaging will depend, in part, on our ability to protect our proprietary rights to the licensed technology. Although EKI, the largest stockholder of the Company, and EarthShell endeavor to protect the licensed technology through, among other things, U.S. and foreign patents, the duration of these patents is limited and the patents and patent applications licensed to us may not be sufficient to protect our technology. The patents that EKI obtains and licenses to us may not be validly held and others may try to circumvent or infringe those patents. We also rely on trade secrets and proprietary know-how that we try to protect in part by confidentiality agreements with our licensee manufacturers, proposed joint venture partners, employees and consultants. These agreements have limited terms and these agreements may be breached, we may not have adequate remedies for any breach and our competitors may learn our trade secrets or independently develop them. It is necessary for us to litigate from time to time to enforce patents issued or licensed to us, to protect our trade secrets or know-how and to determine the enforceability, scope and validity of the proprietary rights of others.

We believe that we own or have the rights to use all of the technology that we expect to incorporate into EarthShell Packaging products, but an adverse determination in litigation or infringement proceedings to which we are or may become a party could subject us to significant liabilities and costs to third parties or require us to seek licenses from third parties. Although patent and intellectual property disputes are often settled through licensing or similar arrangements, costs associated with those arrangements could be substantial and could include ongoing royalties. Furthermore, we may not obtain the necessary licenses on satisfactory terms or at all. We could incur substantial costs attempting to enforce our licensed patents against third party infringement, or the unauthorized use of our trade secrets and proprietary know-how or in defending ourselves against claims of infringement by others. Accordingly, if we suffered an adverse determination in a judicial or administrative proceeding or failed to obtain necessary licenses, it would prevent us from manufacturing or licensing others to manufacture some of our products.

Failure of our licensees to produce EarthShell Packaging products profitably on a commercial scale would adversely affect our ability to compete

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with conventional disposable foodservice packagers

Production volumes of EarthShell Packaging products to date have been low relative to the intended capacity of the various manufacturing lines, and, until production volumes approach design capacity levels, actual costs and profitability will not be certain. Since the actual cost of manufacturing EarthShell Packaging products on a commercial scale has not been fully demonstrated, they may not be manufactured at a competitive cost. As our licensees and joint venture partners begin to commercially produce EarthShell Packaging products, they may encounter unexpected difficulties that cause production costs to exceed current estimates. The failure to manufacture EarthShell Packaging products at commercially competitive costs would make it difficult to compete with other foodservice disposable manufacturers.

Unavailability of raw materials used to manufacture our products, increases in the price of the raw materials, or the necessity of finding alternative raw materials to use in our products could delay the introduction and market acceptance of our products

Although we believe that sufficient quantities of all raw materials used in EarthShell Packaging products are generally available, if any raw materials become unavailable, it could delay the commercial introduction and hinder market acceptance of EarthShell Packaging products. In addition, our licensees and joint venture partners may become significant consumers of certain key raw materials such as starch, and if such consumption is substantial in relation to the available resources, raw material prices may increase which in turn may increase the cost of EarthShell Packaging products and impair our profitability. In addition, we may need to seek alternative sources of raw materials or modify our product formulations if the cost or availability of the raw materials that we currently use become prohibitive.

If initial purchasers of the EarthShell Packaging products do not purchase significant quantities, it could delay the introduction and market acceptance of the products

It will be important for our licensees and joint venture partners to identify and obtain contractual commitments from major customers for substantial quantities of product. If initial purchasers of our products do not ultimately purchase significant quantities or continue to purchase on a repeat basis, it will delay our ability to realize meaningful royalty revenues from sales of those products.

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We do not own the technology necessary to manufacture EarthShell Packaging

EarthShell Packaging is based primarily on patented composite material technology licensed on an exclusive worldwide basis from EKI, the largest stockholder of the Company, and to a lesser extent, on a limited exclusive, worldwide basis from the Biotec Group. The Company does not own the technology necessary to manufacture EarthShell Packaging and is dependent upon a license agreement with EKI (the "EKI Licensing Agreement") to use that technology. The licensed technology is limited to the development, manufacture and sale of specified foodservice disposables for use in the foodservice industry, and there is no right to exploit opportunities to apply this technology or improve it outside this field of use. If EKI were to file for or be declared bankrupt, the Company would likely be able to retain its rights under the EKI License Agreement with respect to U.S. patents; however, it is possible that steps could be taken to terminate its rights under the EKI License Agreement with respect to

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international patents. EKI is the largest stockholder of the Company, and conflicts could arise with regard to performance under the License Agreement, corporate opportunities or time devoted to the business of the Company by officers and employees of EKI.

Our operations are subject to regulation by the U.S. Food and Drug Administration

The manufacture, sale and use of EarthShell Packaging are subject to regulation by the U.S. Food and Drug Administration (the "FDA"). The FDA's regulations are concerned with substances used in food packaging materials, not with specific finished food packaging products. Thus, food and beverage containers are in compliance with FDA regulations if the components used in the food and beverage containers: (i) are approved by the FDA as indirect food additives for their intended uses and comply with the applicable FDA indirect food additive regulations; or (ii) are generally recognized as safe for their intended uses and are of suitable purity for those intended uses. The Company believes that EarthShell Packaging plates, bowls and hinged-lid containers and all other current and prototype EarthShell Packaging products of the Company are in compliance with all requirements of the FDA and do not require additional FDA approval. However, the FDA may not agree with these conclusions, which could have a material adverse affect on our business operations.

### RISKS RELATED TO THIS OFFERING

Future Sales By Our Stockholders May Adversely Affect Our Stock Price And Our Ability To Raise Funds In New Stock Offerings

Sales of our common stock in the public market following this offering could lower the market price of our common stock. Sales may also make it more difficult for us to sell equity securities or equity-related securities in the future at a time and price that our management deems acceptable or at all. Of the 20,095,190 shares of common stock outstanding as of July 21, 2006, 11,686,330 shares are, or will be, freely tradable without restriction, unless held by our "affiliates". The remaining shares of common stock, which will be held by existing stockholders, including the officers and directors, are "restricted securities" and may be resold in the public market only if registered or pursuant to an exemption from registration. Some of these shares may be resold under Rule 144.

Existing Shareholders will Experience Significant Dilution From Our Sale Of Shares Pursuant To The Purchase Agreement with Cornell Capital Partners

The sale of shares pursuant to the Purchase Agreement with Cornell Capital Partners will have a dilutive impact on our stockholders. For example, if the offering occurred March 31, 2006 at an assumed conversion price of \$1.7776 per share (eighty-eight percent (88%) of the average of the two (2) lowest volume weighted average prices during the ten (10) days immediately preceding a recent trading date), the new stockholders would experience an immediate dilution in the net tangible book value of \$2.0279 per share. Dilution per share at prices of \$1.3332, \$0.8888 and \$0.4444 per share would be \$1.5835, \$1.1391 and \$0.6947, respectively. As a result, our net income per share could decrease in future periods, and the market price of our common stock could decline. In addition, the lower our stock price, the more shares of common stock we will have to convert under the Purchase Agreement. If our stock price is lower, then our existing stockholders would experience greater dilution.

Under The Purchase Agreement Cornell Capital Partners Will Pay Less Than The

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### Then-Prevailing Market Price Of Our Common Stock

Pursuant to the Purchase Agreement, Cornell Capital Partners will convert the Cornell Capital Debentures into shares of EarthShell's common stock at a discount equal to eighty-eight percent (88%) of the average of the two (2) lowest volume weighted average prices during the ten (10) days immediately preceding the date of conversion. The common stock to be issued will be at a twelve percent (12%) discount to the two (2) lowest volume weighted average prices during the ten (10) days immediately preceding the date of conversion. Based on this discount, Cornell Capital Partners will have an incentive to convert immediately to realize the gain on the twelve percent (12%) discount. These discounted sales could cause the price of our common stock to decline, based on increased selling of the Company's common stock.

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### The Selling Stockholders May Sell Their Shares Of Common Stock In The Market, Which Sales May Cause Our Stock Price To Decline

The selling stockholders may sell in the public market up to 10,327,844 shares of common stock being registered in this offering. That means that up to 9,687,034 shares may be sold pursuant to this Registration Statement. Such sales may cause our stock price to decline. The officers and Directors of the Company and those stockholders who are significant shareholders as defined by the SEC will continue to be subject to the provisions of various insider trading and rule 144 regulations.

### The Price You Pay In This Offering Will Fluctuate And May Be Higher Or Lower Than The Prices Paid By Other Persons Participating In This Offering

The price in this offering will fluctuate based on the prevailing market price of the common stock on the Over-the-Counter Bulletin Board. Accordingly, the price you pay in this offering may be higher or lower than the prices paid by other persons participating in this offering.

### Our Common Stock Is Deemed To Be "Penny Stock", Which May Make It More Difficult For Investors To Sell Their Shares Due To Suitability Requirements

Our common stock is deemed to be "penny stock" as that term is defined in Rule 3a51-1 promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Penny stocks are stock:

- o With a price of less than \$5.00 per share;
- o That are not traded on a "recognized" national exchange;
- o Whose prices are not quoted on the NASDAQ automated quotation system (NASDAQ listed stock must still have a price of not less than \$5.00 per share); or
- o In issuers with net tangible assets less than \$2.0 million (if the issuer has been in continuous operation for at least three (3) years) or \$5.0 million (if in continuous operation for less than three (3) years), or with average revenues of less than \$6.0 million for the last three (3) years.

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Broker/dealers dealing in penny stocks are required to provide potential investors with a document disclosing the risks of penny stocks. Moreover, broker/dealers are required to determine whether an investment in a penny stock is a suitable investment for a prospective investor. These requirements may reduce the potential market for our common stock by reducing the number of potential investors. This may make it more difficult for investors in our common stock to sell shares to third parties or to otherwise dispose of them. This could cause our stock price to decline.

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### FORWARD-LOOKING STATEMENTS

This Prospectus contains certain forward-looking statements regarding management's plans and objectives for future operations including plans and objectives relating to our planned marketing efforts and future economic performance. The forward-looking statements and associated risks set forth in this Prospectus include or relate to, among other things, (a) our projected sales and profitability, (b) our growth strategies, (c) anticipated trends in our industry, (d) our ability to obtain and retain sufficient capital for future operations, and (e) our anticipated needs for working capital. These statements may be found under "Management's Discussion and Analysis of Financial Condition and Results of Operations" and "Description of Business" as well as in this Prospectus generally. Actual events or results may differ materially from those discussed in forward-looking statements as a result of various factors, including, without limitation, the risks outlined under "Risk Factors" and matters described in this Prospectus generally. In light of these risks and uncertainties, there can be no assurance that the forward-looking statements contained in this Prospectus will in fact occur.

The forward-looking statements herein are based on current expectations that involve a number of risks and uncertainties. Such forward-looking statements are based on assumptions that there will be no material adverse competitive or technological change in conditions in our business, that demand for our products will significantly increase, that our Chief Executive Officer and Chief Financial Officer will remain employed as such, that our forecasts accurately anticipate market demand, and that there will be no material adverse change in our operations or business or in governmental regulations affecting us or our manufacturers and/or suppliers. The foregoing assumptions are based on judgments with respect to, among other things, future economic, competitive and market conditions, and future business decisions, all of which are difficult or impossible to predict accurately and many of which are beyond our control. Accordingly, although we believe that the assumptions underlying the forward-looking statements are reasonable, any such assumption could prove to be inaccurate and therefore there can be no assurance that the results contemplated in forward-looking statements will be realized. In addition, as disclosed elsewhere in the "Risk Factors" section of this Prospectus, there are a number of other risks inherent in our business and operations which could cause our operating results to vary markedly and adversely from prior results or the results contemplated by the forward-looking statements. Growth in absolute and relative amounts of cost of goods sold and selling, general and administrative expenses or the occurrence of extraordinary events could cause actual results to vary materially from the results contemplated by the forward-looking statements. Management decisions, including budgeting, are subjective in many respects and periodic revisions must be made to reflect actual conditions and business developments, the impact of which may cause us to alter marketing, capital investment and other expenditures, which may also materially adversely affect



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our results of operations. In light of significant uncertainties inherent in the forward-looking information included in this Prospectus, the inclusion of such information should not be regarded as a representation by us or any other person that our objectives or plans will be achieved.

Some of the information in this Prospectus contains forward-looking statements that involve substantial risks and uncertainties. Any statement in this Prospectus and in the documents incorporated by reference into this Prospectus that is not a statement of an historical fact constitutes a "forward-looking statement". Further, when we use the words "may", "expect", "anticipate", "plan", "believe", "seek", "estimate", "internal" and similar words, we intend to identify statements and expressions that may be forward-looking statements. We believe it is important to communicate certain of our expectations to our investors. Forward-looking statements are not guarantees of future performance. They involve risks, uncertainties and assumptions that could cause our future results to differ materially from those expressed in any forward-looking statements. Many factors are beyond our ability to control or predict. You are accordingly cautioned not to place undue reliance on such forward-looking statements. Important factors that may cause our actual results to differ from such forward-looking statements include, but are not limited to, the risk factors discussed below. Before you invest in our common stock, you should be aware that the occurrence of any of the events described under "Risk Factors" below or elsewhere in this Prospectus could have a material adverse effect on our business, financial condition and results of operation. In such a case, the trading price of our common stock could decline and you could lose all or part of your investment.

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### SELLING STOCKHOLDERS

The following table presents information regarding the selling stockholders. The selling stockholders are the entities who have assisted in or provided financing to EarthShell. A description of each selling stockholder's relationship to EarthShell and how each selling stockholder acquired the shares to be sold in this offering is detailed in the information immediately following this table.

The selling shareholders may not choose to sell all of the shares covered by this registration statement, or, under certain market conditions, may not be entitled to convert and sell all of the shares covered by their respective registration or conversion agreements.

| Selling Stockholder                                | Shares<br>Beneficially<br>Owned Before<br>Offering | Percentage of<br>Outstanding<br>Shares<br>Beneficially<br>Owned Before<br>Offering(1) | Maximum<br>Number of<br>Shares To Be<br>Acquired<br>Pursuant to<br>the Purchase<br>Agreement | Percentage of<br>Outstanding<br>Shares Which<br>May be<br>Acquired<br>Pursuant to<br>the Purchase<br>Agreement | Sh<br>So |
|--|--|---|--|--|----------|
| Shares Acquired In Financing Transactions With Ear |  |   |  |  |          |

Cornell Capital

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|                            |               |       |           |        |   |
|----------------------------|---------------|-------|-----------|--------|---|
| Partners, LP               | 1,037,000 (2) | 4.9%  | 6,700,000 | 33.34% | 7 |
| Highgate House Funds, Ltd. | 364,500 (4)   | 1.84% | --        | --     |   |

Debt Restructuring And Settlement Transactions With EarthShell

|                                   |           |       |    |    |  |
|-----------------------------------|-----------|-------|----|----|--|
| Islandia, L.P.                    | 100,000   | *     | -- | -- |  |
| Midsummer Investment,<br>Ltd. (5) | 25,000    | *     | -- | -- |  |
| Omicron Master Trust (6)          | 93,000    | *     | -- | -- |  |
| SF Capital Partners Ltd.          | 1,000,000 | 5.04% | -- | -- |  |
| Straus - GEPT L.P.                | 36,250    | *     | -- | -- |  |
| Straus Partners L.P. (8)          | 63,750    | *     | -- | -- |  |
| Vam Dam Machine Corp.             | 75,000    | *     | -- | -- |  |
| Alcalde & Fay                     | 50,917    | *     | -- | -- |  |

EarthShell Asia Transaction

|                           |               |       |    |    |  |
|---------------------------|---------------|-------|----|----|--|
| Ying Wang                 | 83,333        | *     | -- | -- |  |
| Monty Waltz               | 38,333        | *     | -- | -- |  |
| Greg C. Hoffman           | 1,231,535 (7) | 6.21% | -- | -- |  |
| Steven L. Galvanoni Trust | 746,799 (8)   | 3.76% | -- | -- |  |

Consultants And Others

|                                 |             |   |           |    |  |
|---------------------------------|-------------|---|-----------|----|--|
| Sloan Securities<br>Corporation | 6,450       | * | --        | -- |  |
| Mr. Benton Wilcoxon             | 190,000 (9) | * | --        | -- |  |
| Mr. Douglas Metz                | 81,000 (10) | * | --        | -- |  |
| Total                           | 5,222,867   |   | 6,700,000 |    |  |

\* Less than one percent (1%).

- (1) Applicable percentage of ownership is based on 20,095,190 shares of common stock outstanding as of July 21, 2006, together with securities exercisable or convertible into shares of common stock within sixty (60) days of July 21, 2006, for each stockholder. Beneficial ownership is determined in accordance with the rules of the Securities and Exchange Commission and generally includes voting or investment power with respect to securities. Shares of common stock subject to securities exercisable or convertible into shares of common stock that are currently exercisable or exercisable within sixty (60) days of July 21, 2006 are deemed to be beneficially owned by the person holding such securities for the purpose of computing the percentage of ownership of such person, but are not treated as outstanding for the purpose of computing the percentage ownership of any other person. Note that affiliates are subject to Rule 144 and Insider Trading regulations - percentage computation is for form purposes only.

- (2) Represents 910,500 shares and 126,500 shares underlying convertible debentures.
- (3) Includes 6,700,000 shares that may be acquired by Cornell Capital Partners pursuant to convertible debentures and 910,500 shares of common stock underlying warrants. Under the purchase agreement, Cornell has the right to convert up to \$4.5 million, plus accrued interest, into shares of

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EarthShell common stock over a period of time. Assuming the market price for EarthShell common stock is at or above \$3 per share at the time of conversion, EarthShell will need to deliver approximately 1.65 million shares. In the event that the market price for EarthShell common stock is less than \$3 per share at the time of the conversion, the conversion price will be adjusted to 88% of the fair market value of EarthShell common stock at the time of the conversion. Because of the potentially variable nature of the future conversion price, pursuant to the Purchase Agreement, EarthShell has agreed to register 6,700,000 shares underlying the full \$4.5 million of convertible debentures.

- (4) Represents 364,500 shares of common stock underlying warrants.
- (5) Midsummer Capital, LLC is the investment manager to Midsummer Investment Ltd. By virtue of such relationship, Midsummer Capital, LLC may be deemed to have dispositive power over the shares owned by Midsummer Investment Ltd. Midsummer Capital, LLC disclaims beneficial ownership of such shares. Mr. Michel Amsalem and Mr. Scott Kaufman have delegated authority from the members of Midsummer Capital, LLC with respect to the shares of common stock owned by Midsummer Investment Ltd. Messrs. Amsalem and Kaufman may be deemed to share dispositive power over the shares of our common stock owned by Midsummer Investment Ltd. Messrs. Amsalem and Kaufman disclaim beneficial ownership of such shares of our common stock and neither person has any legal right to maintain such delegated authority.
- (6) Omicron Capital, L.P., a Delaware limited partnership ("Omicron Capital"), serves as investment manager to Omicron Master Trust, a trust formed under the laws of Bermuda ("Omicron"), Omicron Capital, Inc., a Delaware corporation ("OCI"), serves as general partner of Omicron Capital, and Winchester Global Trust Company Limited ("Winchester") serves as the trustee of Omicron. By reason of such relationships, Omicron Capital and OCI may be deemed to share dispositive power over the shares of our common stock owned by Omicron, and Winchester may be deemed to share voting and dispositive power over the shares of our common stock owned by Omicron. Omicron Capital, OCI and Winchester disclaim beneficial ownership of such shares of our common stock. Omicron Capital has delegated authority from the board of directors of Winchester regarding the portfolio management decisions with respect to the shares of common stock owned by Omicron and, as of June 9, 2005, Mr. Olivier H. Morali and Mr. Bruce T. Bernstein, officers of OCI, have delegated authority from the board of directors of OCI regarding the portfolio management decisions of Omicron Capital with respect to the shares of common stock owned by Omicron. By reason of such delegated authority, Messrs. Morali and Bernstein may be deemed to share dispositive power over the shares of our common stock owned by Omicron. Messrs. Morali and Bernstein disclaim beneficial ownership of such shares of our common stock and neither of such persons has any legal right to maintain such delegated authority. No other person has sole or shared voting or dispositive power with respect to the shares of our common stock being offered by Omicron, as those terms are used for purposes under Regulation 13D-G of the Securities Exchange Act of 1934, as amended. Omicron and Winchester are not "affiliates" of one another, as that term is used for purposes of the Securities Exchange Act of 1934, as amended, or of any other person named in this Prospectus as a selling stockholder. No person or "group" (as that term is used in Section 13(d) of the Securities Exchange Act of 1934, as amended, or the SEC's Regulation 13D-G) controls Omicron and Winchester.
- (7) Includes 66,668 shares of common stock to be registered in this offering and 664,867 shares of common stock underlying warrants. Also includes 500,000 shares of common stock that a third party may assert disputed competing claims to some or all such stock.
- (8) Includes 636,466 shares of common stock underlying warrants and 83,333 shares that will be registered as part of this offering.
- (9) Consists of 65,000 shares of common stock underlying warrants at \$3.00 per share and 125,000 shares of common stock underlying warrants at \$4.00 per share.

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(10) Consists of 80,000 shares of common stock underlying warrants and 1,000 shares of free trading common stock.

The following information contains a description of each selling shareholder's relationship to EarthShell and how each selling shareholder acquired the shares to be sold in this offering is detailed below. None of the selling stockholders have held a position or office, or had any other material relationship, with the Company, except as follows:

### Financing Transactions With EarthShell

Cornell Capital Partners, LP. Cornell Capital Partners is the investor pursuant to the Purchase Agreement and a holder of the May Warrant, the August Warrant and the December Warrant. All investment decisions of, and control of, Cornell Capital Partners are held by its general partner, Yorkville Advisors, LLC ("Yorkville"). Mark Angelo, the managing member of Yorkville, makes the investment decisions on behalf of and controls Yorkville. Cornell Capital Partners has acquired or will acquire all shares being registered in this offering in financing transactions with EarthShell. Those transactions are explained below:

Cornell Capital Partners Financings. On March 23, 2005, the Company entered into a financing arrangement with Cornell Capital Partners whereby the Company issued promissory notes to, and entered into a security agreement with, Cornell Capital Partners. Pursuant to the financing, the Company issued promissory notes (collectively, the "CCP Notes") to Cornell Capital Partners with a total principal amount of \$2.5 million. Upon consummation of the December Debenture Purchase Agreement with Cornell Capital Partners on January 6, 2006, described below, the CCP Notes and all accrued interest thereon have been paid in full.

On March 23, 2005, the Company entered into a Standby Equity Distribution Agreement (the "SEDA") with Cornell Capital Partners whereby the Company was entitled to, at its sole discretion, periodically sell to Cornell Capital Partners shares of its common stock for a total aggregate purchase price of up to \$10.0 million. On June 9, 2005, the Company filed a registration statement on Form S-1 with the SEC to register shares of its common stock underlying the SEDA. On September 27, 2005, the registration statement was withdrawn and, on December 30, 2005, the parties terminated the SEDA.

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On May 26, 2005, the Company issued a common stock purchase warrant to Cornell Capital Partners to purchase 625,000 shares of common stock of the Company. This May Warrant expires on May 26, 2006, has an exercise price which was adjusted to \$3.00 per share of common stock and has "piggy back" and demand registration rights. In August 2005 Cornell Capital Partners agreed to consolidate the CCP Notes and to defer the commencement of repayment installments. In consideration of this modification to CCP Notes, the Company issued a warrant to Cornell Capital Partners to purchase 50,000 shares of common stock of the Company. This Warrant expires on May 26, 2006, has an exercise price, which was adjusted to \$3.00 per share of common stock as of December 30, 2005, and has "piggy back" and demand registration rights.

- o Purchase Agreement. On December 30, 2005, the Company entered into a Purchase Agreement with Cornell Capital Partners. Pursuant to the Purchase Agreement, the Company issued to Cornell Capital Partners the Cornell Capital Debentures. The Cornell Capital Debentures shall

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be convertible into shares of the Company's common stock, and the Company received proceeds from the sale of the Cornell Capital Debentures equal to \$4,500,000 on January 6, 2006. The selling shareholders may not choose to sell all of the shares covered by this registration statement, or, under certain market conditions, may not be entitled to convert and sell all of the shares provided covered by their respective registration or conversion agreements.

The Cornell Capital Debentures are secured by (i) a Pledge and Escrow Agreement, by and among the Company, Cornell Capital Partners and David Gonzalez, Esq., (ii) an Insider Pledge and Escrow Agreement (the "IPEA"), by and among the Company, Cornell Capital Partners, David Gonzalez, Esq. and Mr. Benton Wilcoxon and (iii) an Amended and Restated Security Agreement, by and between the Company and Cornell Capital Partners. The Cornell Capital Debentures are secured by substantially all of the Company's assets, have a three (3) year term and accrue interest at twelve percent (12%) per annum. Beginning 60 days after the Securities and Exchange Commission ("SEC") declares the accompanying registration statement effective, Cornell Capital Partners is entitled, at its option, to convert and sell up to \$250,000 of the principal amount of the Cornell Capital Debentures, plus accrued interest, into shares of the Company's common stock, within any 30 day period at the lesser of (i) a price equal to \$3.00 or (ii) eighty-eight percent (88%) of the average of the two (2) lowest volume weighted average prices of the common stock during the ten (10) trading days immediately preceding the conversion date, as quoted by Bloomberg, LP. The conversion limitation of \$250,000 per month does not apply if the market price is greater than \$3.00 per share. The holder of the Cornell Capital Debentures may not convert the Cornell Capital Debentures or receive shares of the Company's common stock as payment of interest thereunder to the extent such conversion or receipt of such interest payment would result in the holder, together with any affiliate thereof, beneficially owning (as determined in accordance with Section 13(d) of the Exchange Act, and the rules promulgated thereunder) in excess of 4.9% of the then issued and outstanding shares of common stock, including shares issuable upon conversion of, and payment of interest on, the December Debenture held by such holder after application of this 4.9% restriction. This 4.9% restriction may be waived by a holder (but only as to itself and not to any other holder) upon not less than sixty-five (65) days prior notice to the Company.

The Company may redeem, with three (3) business days advance written notice to Cornell Capital Partners, a portion or all amounts outstanding under the Cornell Capital Debentures prior to the maturity date provided that the closing bid price of the Company's common stock, as reported by Bloomberg, LP, is less than \$3.00 at the time of the redemption notice. The Company shall pay an amount equal to the principal amount being redeemed plus a redemption premium equal to ten percent (10%) of the principal amount being redeemed, and accrued interest, to be delivered to the Cornell Capital Partners on the third (3rd) business day after the redemption notice, provided, however, this redemption premium does not apply until the outstanding principal balance of the Cornell Capital Debentures have been reduced by \$2.5 million. The amount that Cornell may convert in any 30 day period will be reduced by the amount that the Company redeems.

Under the purchase agreement, Cornell has the right to convert up to \$4.5 million, plus accrued interest, into shares of EarthShell common stock over a period of time. Assuming the market price for EarthShell common stock is at or above \$3 per share at the time of conversion, EarthShell will need to deliver approximately 1.65 million shares. In the event that the market price for EarthShell common stock is less than \$3 per share at the time of the conversion, the conversion price will be adjusted to 88% of the fair market value of EarthShell common stock at the time of the conversion. Because of the potentially variable nature of the future conversion price, pursuant to the Purchase Agreement, EarthShell has agreed to register a number of shares equal

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to 4 times the number of shares that would be required to convert the full \$4.5 million, plus accrued interest, at \$3 per share.

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On July 12, 2006, the Company entered into a Letter Agreement with Cornell Capital Partners, pursuant to which Cornell Capital Partners has agreed to forbear from exercising certain rights and remedies under the Cornell Capital Debentures and that certain Registration Rights Agreement, of even date with the Cornell Capital Debentures in exchange for the issuance by the Company to Cornell Capital Partners of 250,000 shares of the Company's common stock.

The Company has acknowledged in the Agreement that an event of default under the Cornell Capital Debentures had occurred as of June 30, 2006 with the Company failing to timely register with the U.S. Securities and Exchange Commission the common stock underlying the Cornell Capital Debentures. The Company also acknowledged that Cornell Capital Partners is entitled to liquidated damages equal to one percent (1%) of the liquidated value of the Cornell Capital Partners for each thirty (30) day period after May 31, 2006. Pursuant to the Agreement, Cornell Capital Partners has agreed to waive the default, including all liquidated damages that may have accrued through the date of the Agreement and during the Forbearance Period (as defined below), in exchange for the 250,000 shares of common stock and the Company obtaining the effectiveness by September 30, 2006 of that certain Registration Statement originally filed with the U.S. Securities and Exchange Commission on February 14, 2006, which includes the shares of common stock underlying the Cornell Capital Debentures.

Furthermore, Cornell Capital Partners has agreed not to make any conversions under the Cornell Capital Debentures until the earlier of September 30, 2006 or the expiration of the Forbearance Period, which such Forbearance Period shall commence on the date of the execution of the Agreement and continue for so long as the Company strictly complies with the terms of the Agreement and there is no occurrence or existence of any event of default other than the Default under the transaction documents or any other agreement that the Company has entered into with Cornell Capital Partners. The 250,000 shares of common stock shall have piggy-back registration rights and Cornell Capital Partners shall also have the right to demand the registration of the 250,000 shares of common stock by providing to the Company with thirty (30) days prior written notice of such request.

- o May Warrant. On May 26, 2005, the Company issued a common stock purchase warrant to Cornell Capital Partners to purchase 260,500 shares of common stock of the Company. This May Warrant expires the earlier of one (1) year or the date that 2,500,000 is repaid, has an exercise price that was adjusted to \$3.00 per share of common stock as of December 30, 2005 and has "piggy back" and demand registration rights. These shares are being registered in this offering.
- o August Warrant. In August 2005, the Company issued a common stock purchase warrant to Cornell Capital Partners to purchase 50,000 shares of common stock of the Company as consideration for consolidating two (2) promissory notes (the "CCP Notes") and extending the date upon which amortization and repayment of the CCP Notes is to begin. This August Warrant expires two (2) years from the date of issuance, has an exercise price of \$3.00 per share of common stock and has "piggy back" registration and demand rights. These shares are being registered in this offering.

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- o December Warrant. On December 30, 2005, the Company issued to Cornell Capital Partners a common stock purchase warrant to purchase up to 350,000 shares of common stock of the Company. This December Warrant has an exercise price of \$4.00 per share, expires two (2) years from the date it was issued and has "piggy back" and demand registration rights. In the event that the Company issues common stock or other security convertible into common stock at a price less than \$4.00 per share, the \$4.00 exercise price is subject to adjustment downward to a price not less than \$3.00 per share in the event the Company issues or sells any shares of its common stock for a consideration per share less than the exercise price of the December Warrant except for certain exclusions.

There are certain risks related to sales by Cornell Capital Partners, including:

- o The outstanding shares will be issued upon conversion of the Cornell Capital Debentures based on a twelve percent (12%) discount to the market price. As a result, the lower the stock price around the time Cornell Capital Partners is issued shares, the greater chance that Cornell Capital Partners will receive more shares. This could result in substantial dilution to the interests of other holders of common stock.
- o To the extent Cornell Capital Partners sells its common stock, the common stock price may decrease due to the additional shares in the market. This could allow Cornell Capital Partners to sell greater amounts of common stock, the sales of which would further depress the stock price.

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- o The significant downward pressure on the price of the common stock as Cornell Capital Partners sells material amounts of common stocks could encourage short sales by third parties. This could place further downward pressure on the price of the common stock.

Highgate House Funds, Ltd. All of the investment decisions for Highgate House Funds are made by its portfolio manager, Mark Angelo. Control of Highgate House Funds is held by its general partner, Yorkville Advisors, LLC. Mark Angelo, the managing member of Yorkville Advisors, makes the investment decisions on behalf of and controls Yorkville Advisors. Highgate House Funds has acquired all of the shares being registered in this offering in financing transactions with EarthShell.

Shares Acquired In Debt Restructuring And Settlement Transactions With EarthShell

Islandia, L.P. Pursuant to an amended and restated debenture purchase agreement dated September 29, 2004, in connection with the restructuring of its debt and settlement of \$400,000 in convertible debentures issued to Islandia, L.P. in July, 2004, the Company issued 100,000 shares of its unregistered common stock to Islandia, L.P. in settlement of the Company's default under the debentures. These shares are being registered in this offering. All investment decisions of, and control of, Islandia, L.P. are held by its parent, John Lang, Inc. Richard O. Berner makes the investment decisions on behalf of and controls John Lang, Inc.

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Midsummer Investment, Ltd. Pursuant to an amended and restated debenture purchase agreement, dated September 29, 2004, in connection with the restructuring of the Company's debt and settlement of \$600,000 in convertible debentures issued to Midsummer Investment, Ltd. in July 2004, the Company issued 150,000 shares of its unregistered common stock to Midsummer Investment, Ltd. in settlement of the Company's default under the debentures. In February 2006, the Company issued to Midsummer an additional 25,000 shares of its unregistered common stock in settlement of claims for damages pursuant to the amended and restated debenture purchase agreement in which EarthShell agreed to timely file a registration statement to register the 150,000 shares issued as part of the agreement. These additional shares are being registered in this offering. Michel A. Amsalem and Scott Kaufman make the investment decisions on behalf of and control Midsummer Investment, Ltd.

Omicron Master Trust. Pursuant to an amended and restated debenture purchase agreement, dated September 29, 2004, in connection with the restructuring of the Company's debt and settlement of \$750,000 in convertible debentures issued to Omicron Master Trust in July, 2004, the Company issued 187,500 shares of its unregistered common stock to Omicron Master Trust in settlement of the Company's default under the debentures. These shares are being registered in this offering. Bruce Bernstein makes the investment decisions on behalf of Omicron Master Trust.

SF Capital Partners Ltd. Pursuant to an Amended and Restated Debenture Purchase Agreement, dated September 30, 2004, in connection with the restructuring of the Company's debt and settlement of \$4,500,000 in debentures issued to SF Capital Partners Ltd. ("SF Capital Partners") in July, 2004, the Company agreed to a settlement resulting in a \$2,375,000 contingent settlement obligation may be converted, at SF Capital Partners' option, into 791,667 shares, subject to a price protection clause, of the Company's unregistered common stock at \$3.00 per share. (See "Management Discussion and Analysis, Liquidity and Capital Resources, SF Capital") SF Capital has the right to convert the unpaid portion of the \$2.375 million into shares of the Company's common stock at a price equal to the lesser of \$3.00 per share, or the price per share that EarthShell shall subsequently receive upon the issuance of its common stock (or other convertible security) during the three year period commencing September 30, 2004. On January 11, 2006, SF Capital Partners delivered a conversion notice to the Company on January 11, 2006 requesting conversion of \$558,063 of the Contingent Settlement into shares of the Company's common stock. Following the conversion, the remaining balance of the Contingent Settlement was approximately \$1.8 million. Pursuant to the Amended and Restated debenture Purchase Agreement, the company had the obligation to secure the registration of the shares of common stock underlying the conversion feature. The Company has not yet secured the registration of these shares and is subject to a liquidated damages obligation of 1% per month of the outstanding portion of the contingent settlement amount. As of June 30, 2006, the accumulated liquidated damages total approximately \$450,000. The Company has agreed to register on behalf of SF Capital partners 1,000,000 shares of the Company's common stock to be available for the conversion of the remaining balance owed to SF Capital subject to conversion price adjustments pursuant to the price protection clause of the amended and restated debenture purchase agreement, to pay liquidated damages stemming from the Company's non-performance under the registration rights clause of the settlement agreement and in settlement of any other claims. The shares underlying this conversion right and settlement of claims are being registered in this offering. Michael A. Roth and Brian J. Stark make the investment decisions on behalf of SF Capital Partners.



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On January 11, 2006, the Company issued 186,021 shares of the Company's common stock to SF Capital Partners pursuant to a conversion right related to the Contingent Settlement of \$2.375 million reached under the September 30, 2004 Amended and Restated Debenture Purchase Agreement. Pursuant to the Contingent Settlement, EarthShell must pay \$2.375 million to SF Capital Partners from 33% of any equity funding received by the Company (excluding the first \$2.7 million funded by MBS) or 50% of the royalties received by EarthShell in excess of \$250,000 per month (as determined on a cumulative basis commencing July 1, 2004). The Company has the right to convert the unpaid portion of the \$2.375 million into shares of the Company's common stock at a price equal to the lesser of \$3.00 per share, or the price per share that EarthShell shall subsequently receive upon the issuance of its common stock (or other convertible security) during the three year period commencing September 30, 2004. SF Capital Partners delivered a conversion notice to the Company on January 11, 2006 requesting conversion of \$558,063 of the Contingent Settlement into shares of the Company's common stock. Following the conversion, the remaining balance of the Contingent Settlement was approximately \$1.8 million. The Company recorded that difference between the conversion value and the fair value of the common stock at the time of the conversion as a settlement gain in the amount of \$213,924.

Straus - GEPT L.P. Pursuant to an amended and restated debenture purchase agreement, dated September 30, 2004, in connection with the restructuring of the Company's debt and settlement of \$105,000 in debentures issued to Straus - GEPT L.P. in July, 2004, the Company issued 26,250 shares of its unregistered common stock to Straus - GEPT L.P. in settlement of the Company's default under the debentures. These shares are being registered in this offering. Mickey Straus makes the investment decisions on behalf of and controls Straus - GEPT L.P.

Straus Partners L.P. Pursuant to an amended and restated debenture purchase agreement, dated September 30, 2004, in connection with the restructuring of the Company's debt and settlement of \$195,000 in debentures issued to Straus Partners L.P. in July, 2004, the Company issued 48,750 shares of its unregistered common stock to Straus Partners L.P. in settlement of the Company's default under the debentures. These shares are being registered in this offering. Mickey Straus makes the investment decisions on behalf of and controls Straus Partners L.P.

Van Dam Machine Corp. In December 2005, in connection with the settlement of litigation between the Company and Van Dam Machine Company ("Van Dam") the Company agreed to issue 75,000 shares of its unregistered common stock. These shares are being registered in this offering. John Sari makes the investment decisions on behalf of Van Dam..

Alcalde & Fay. In November 2003 and December 2005, the Company agreed to issue 2,917 and 48,000 shares of its unregistered common stock, respectively, in settlement of certain accounts payable to Alcalde & Fay, a consultant to the Company. These shares are being registered in this offering. Kevin Fay makes the investment decisions on behalf of Alcalde & Fay.

### EarthShell Asia Transaction

In December 2005, in connection with a stock purchase agreement with EarthShell Asia dated August 22 which was subsequently amended and restated, the Company received approximately \$800,000 and issued 266,667 shares of its unregistered common stock. All of these shares are to be registered in this offering. The shares were issued to and are held by various principals of EarthShell Asia as follows:

Ying Wang. Mr. Ying Wang received 83,333 shares of the Company's unregistered common stock.

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Monty Waltz. Mr. Monty Waltz received 33,333 shares of the Company's unregistered common stock.

Greg C. Hoffman. Mr. Greg C. Hoffman received 66,668 shares of the Company's unregistered common stock.

Steven L. Galvanoni Trust. The Steven L. Galvanoni Trust received 83,333 shares of the Company's unregistered common stock. Mr. Steven Galvanoni makes the investment decisions with respect to these shares.

### Consultants And Other Shareholders

Sloan Securities Corporation. Sloan Securities Corporation is an unaffiliated registered broker-dealer that has been retained by us in connection with services provided pursuant to a financing transaction with Cornell Capital Partners. James C. Ackerman, Sloan Securities Corporation's President, makes the investment decisions on behalf of and controls Sloan Securities Corporation. Sloan Securities Corporation received a fee of 6,450 shares of unregistered common stock on or about March 23, 2005. These shares have "piggy back" registration and demand rights and are being registered in this offering.

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Mr. Benton Wilcoxon. In consideration for Mr. Benton Wilcoxon pledging his personal shares in Composite Technology Corporation as a guaranty for a security agreement entered into by the Company