EDGAR Online

AVATAR HOLDINGS INC

FORM 10-Q
(Quarterly Report)

Filed 11/12/03 for the Period Ending 09/30/03

Address	395 VILLAGE DRIVE POINCIANA, FL 34759
Telephone	8634277180
CIK	0000039677
Symbol	AVTR
SIC Code	1531 - Operative Builders
Industry	Real Estate Operations
Sector	Services
Fiscal Year	12/31

Powered By EDGAR Online
http://www.edgar-online.com
© Copyright 2012, EDGAR Online, Inc. All Rights Reserved.
Distribution and use of this document restricted under EDGAR Online, Inc. Terms of Use.

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

FORM 10-Q

☒ Quarterly Report Pursuant to Section 13 or 15(d)
of the Securities Exchange Act of 1934
For the quarterly period ended September 30, 2003

or

☐ Transition Report Pursuant to Section 13 or
15(d) of the Securities Exchange Act of 1934
For the transition period from
_____ to _____

Commission file number 0-7616

I.R.S. Employer Identification Number 23-1739078

Avatar Holdings Inc.

(a Delaware Corporation)
201 Alhambra Circle
Coral Gables, Florida 33134
(305) 442-7000

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Exchange Act). Yes ☒ No ☐

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date: 8,742,027 shares of Avatar's common stock ($1.00 par value) were outstanding as of October 31, 2003.

TABLE OF CONTENTS

PART I — FINANCIAL INFORMATION
ITEM 1. FINANCIAL STATEMENTS
Consolidated Balance Sheets
Consolidated Statements of Operations
See notes to consolidated financial statements.
Consolidated Statements of Cash Flows (Unaudited)
Consolidated Statements of Cash Flows (Unaudited) — continued
Notes to Consolidated Financial Statements (Unaudited)
Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations (dollars in thousands except per share data)
Item 3. Quantitative and Qualitative Disclosure About Market Risk
Item 4. Controls and Procedures
PART II — OTHER INFORMATION
Item 1. Legal Proceedings
Item 6. Exhibits and Reports on Form 8-K
EMPLOYMENT AGREEMENT
RESTRICTED STOCK UNIT AGREEMENT
CEO CERTIFICATION PURSUANT SECTION 302
CFO CERTIFICATION PURSUANT SECTION 302
CEO CERTIFICATION PURSUANT SECTION 906
CFO CERTIFICATION PURSUANT SECTION 906

AVATAR HOLDINGS INC. AND SUBSIDIARIES

INDEX

	PAGE
PART I. Financial Information	
Item 1. Financial Statements (Unaudited) **:**	
Consolidated Balance Sheets — September 30, 2003 and December 31, 2002.	3
Consolidated Statements of Operations — Nine and three months ended September 30, 2003 and 2002.	4
Consolidated Statements of Cash Flows — Nine months ended September 30, 2003 and 2002.	5
Notes to Consolidated Financial Statements	7
Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations	16
Item 3. Quantitative and Qualitative Disclosure About Market Risk	21
Item 4. Controls and Procedures	21
PART II. Other Information	
Item 1. Legal Proceeding	21
Item 6. Exhibits and Reports on Form 8-K	22

PART I — FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

AVATAR HOLDINGS INC. AND SUBSIDIARIES
Consolidated Balance Sheets
(Dollars in thousands except per share data)

	Unaudited September 30, 2003	December 31, 2002
Assets		
Cash and cash equivalents	$ 32,705	$118,839
Restricted cash	2,019	1,073
Receivables, net	6,874	6,846
Land and other inventories	212,480	197,621
Property, plant and equipment, net	48,023	48,148
Other assets	25,183	8,789
Deferred income taxes	4,785	4,751
Total Assets	$332,069	$386,067
Liabilities and Stockholders' Equity		
Liabilities		
Notes, mortgage notes and other debt:		
Corporate	$ 34,077	$102,014
Real estate	8,492	5,698
Estimated development liability for sold land	18,145	19,181
Accounts payable	4,108	751
Accrued and other liabilities	32,866	36,831
Total Liabilities	97,688	164,475
Commitments and Contingencies		
Stockholders' Equity		
Common Stock, par value $1 per share Authorized: 50,000,000 shares Issued: 9,885,790 shares at September 30, 2003 9,552,522 shares at December 31, 2002	9,886	9,553
Additional paid-in capital	177,548	166,996
Retained earnings	68,545	57,766
	255,979	234,315
Treasury stock, at cost, 1,151,622 shares at September 30, 2003 771,864 shares at December 31, 2002	(21,598)	(12,723)
Total Stockholders' Equity	234,381	221,592
Total Liabilities and Stockholders' Equity	$332,069	$386,067

See notes to consolidated financial statements.

AVATAR HOLDINGS INC. AND SUBSIDIARIES
Consolidated Statements of Operations
For the Nine and Three months ended September 30, 2003 and 2002
(Unaudited)
(Dollars in thousands except per share data)

	Nine Months		Three Months	
	2003	2002	2003	2002
Revenues				
Real estate sales	$162,632	$125,200	$56,927	$45,223
Deferred gross profit	905	965	295	275
Interest income	1,122	2,709	254	932
Other	1,561	1,586	518	520
Total revenues	166,220	130,460	57,994	46,950
Expenses				
Real estate expenses	147,711	118,564	52,262	41,777
General and administrative expenses	11,553	9,072	3,949	3,234
Interest expense	1,791	2,885	325	1,483
Loss on redemption of 7% Notes	1,329	—	1,329	—
Other	1,406	1,185	440	420
Total expenses	163,790	131,706	58,305	46,914
Income (loss) from continuing operations before income taxes	2,430	(1,246)	(311)	36
Income tax (benefit) expense	(8,349)	(480)	(9,345)	14
Income (loss) from continuing operations	10,779	(766)	9,034	22
Discontinued operations:				
Loss from operations of discontinued operations	—	(991)	—	(672)
Income tax benefit	—	(381)	—	(259)
Loss from discontinued operations	—	(610)	—	(413)
Net income (loss)	$ 10,779	$ (1,376)	$ 9,034	$ (391)
Basic EPS:				
Income (loss) from continuing operations	$ 1.26	$ (0.09)	$ 1.05	$ —
Loss from discontinued operations	—	(0.07)	—	(0.05)
Net income (loss)	$ 1.26	$ (0.16)	$ 1.05	$ (0.05)
Diluted EPS:				
Income (loss) from continuing operations	$ 1.25	$ (0.09)	$ 1.03	$ —
Loss from discontinued operations	—	(0.07)	—	(0.05)
Net income (loss)	$ 1.25	$ (0.16)	$ 1.03	$ (0.05)

See notes to consolidated financial statements.

AVATAR HOLDINGS INC. AND SUBSIDIARIES
Consolidated Statements of Cash Flows (Unaudited)
For the Nine months ended September 30, 2003 and 2002
(Dollars in Thousands)

	2003	2002
OPERATING ACTIVITIES		
Net income (loss)	$ 10,779	$ (1,376)
Adjustments to reconcile net income (loss) to net cash (used in) provided by operating activities:		
Depreciation and amortization	3,075	4,139
Deferred gross profit	(905)	(965)
Loss on investment in joint venture	788	—
Deferred income taxes	(34)	(861)
Changes in operating assets and liabilities:		
Restricted cash	(946)	(818)
Receivables, net	877	1,349
Inventories	(16,920)	(401)
Other assets	3,092	1,929
Accounts payable and accrued and other liabilities	(287)	7,827
Net assets of discontinued operations	—	249
NET CASH (USED IN) PROVIDED BY OPERATING ACTIVITIES	(481)	11,072
INVESTING ACTIVITIES		
Investment in property, plant and equipment	(1,816)	(2,775)
Investment in Joint Venture	(19,944)	—
Investment in acquisition of property	—	(2,177)
NET CASH USED IN INVESTING ACTIVITIES	(21,760)	(4,952)
FINANCING ACTIVITIES		
Proceeds from revolving lines of credit	5,000	—
Payments for debt issuance costs	(439)	—
Principal payments of real estate borrowings	(2,206)	(666)
Redemption of 7% Notes	(49,913)	—
Repurchase of 7% Notes	(7,585)	—
Purchase of treasury stock	(8,875)	—
Exercise of stock options	125	—
NET CASH USED IN FINANCING ACTIVITIES	(63,893)	(666)
(DECREASE) INCREASE IN CASH	(86,134)	5,454
Cash and cash equivalents at beginning of period	118,839	111,773
CASH AND CASH EQUIVALENTS AT END OF PERIOD	$ 32,705	$117,227

AVATAR HOLDINGS INC. AND SUBSIDIARIES
Consolidated Statements of Cash Flows (Unaudited) — continued
For the Nine months ended September 30, 2003 and 2002
(Dollars in Thousands)

	2003	2002
SUPPLEMENTAL DISCLOSURES OF NON-CASH ACTIVITIES:		
Land and other inventories	$ —	$16,212
Other assets	$ —	$ (9,765)
Corporate notes	$(10,439)	$ (4,667)
Real estate debt	$ —	$ 6,257
Common stock	$ 328	$ 193
Additional paid in capital	$ 10,432	$ 4,884
SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION:		
Cash paid during the period for:		
Interest — (net of amount capitalized of $3,246 and $3,078 in 2003 and 2002, respectively)	$ 1,456	$ 662
Income taxes	$ 4,200	$ 700

See notes to consolidated financial statements.

AVATAR HOLDINGS INC. AND SUBSIDIARIES
Notes to Consolidated Financial Statements (Unaudited)
September 30, 2003
(Dollars in thousands except per share data)

Basis of Statement Presentation and Summary of Significant Accounting Policies

The accompanying consolidated financial statements include the accounts of Avatar Holdings Inc. and its subsidiaries ("Avatar"). All significant intercompany accounts and transactions have been eliminated in consolidation.

The consolidated balance sheets as of September 30, 2003 and December 31, 2002, and the related consolidated statements of operations for the nine and three months ended September 30, 2003 and 2002 and the consolidated statements of cash flows for the nine months ended September 30, 2003 and 2002 have been prepared in accordance with accounting principles generally accepted in the United States for interim financial information, the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all of the information and footnotes required by accounting principles generally accepted in the United States for complete financial statement presentation. In the opinion of management, all adjustments necessary for a fair presentation of such financial statements have been included. Such adjustments consisted only of normal recurring items. Interim results are not necessarily indicative of results for a full year.

The preparation of the consolidated financial statements in accordance with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the amounts reported in the financial statements and the accompanying notes. Actual results could differ from those estimates.

For a complete description of Avatar's other accounting policies, refer to Avatar Holdings Inc.'s 2002 Annual Report on Form 10-K and the notes to Avatar's consolidated financial statements included therein.

Reclassifications

Certain 2002 financial statement items have been reclassified to conform to the 2003 presentation.

Land and Other Inventories

Inventories consist of the following:

	September 30, 2003	December 31, 2002
Land developed and in process of development	$ 76,417	$ 77,765
Land held for future development or sale	26,509	18,182
Dwelling units completed or under construction and community development in process	109,167	101,136
Other	387	538
	$212,480	$197,621

Notes to Consolidated Financial Statements (dollars in thousands except per share data) (Unaudited) – continued

Other Assets

Other assets are summarized as follows:

	September 30, 2003	December 31, 2002
Prepaid expenses	$ 2,978	$3,078
Goodwill	2,263	2,263
Investment in Joint Venture	19,156	868
Deposits	32	670
Other	754	1,910
	$25,183	$8,789

Warranty Costs

Generally, the homebuyer is provided a limited warranty that is underwritten through a third party warrantor. This limited warranty covers defects in materials and workmanship for the first year after closing and defects in electrical, plumbing and mechanical systems for the first two years after closing. This limited warranty also covers major structural defects for up to 10 years after closing. Avatar may have recourse against the subcontractors for claims relating to workmanship and materials. Estimated warranty costs are recorded at the time of closing.

During the nine months ended September 30, 2003 changes in the warranty accrual consisted of the following:

	2003
Accrued warranty costs as of January 1	$ 639
Estimated warranty expense	873
Amounts charged	(568)
Accrued warranty costs as of September 30	$ 944

Notes, Mortgage Notes and Other Debt

On July 1, 2003, Avatar called for partial redemption on July 31, 2003, of $60,000 of the $94,429 in aggregate principal amount outstanding of its 7% Convertible Subordinated Notes due April 2005 (the “Notes”). The redemption price was $1.02 per $1.00 principal amount, plus accrued interest from April 1, 2003 to the redemption date.

The Notes are convertible into Avatar’s common stock at a conversion price of $31.80 per share, or 31.447 shares per $1.00 principal amount of the Notes. Rights of holders to effect conversion of the Notes called for redemption expired at the close of business on July 29, 2003. No interest for the period from April 1, 2003 to the date of conversion was paid with respect to any Notes that were surrendered for conversion.

Notes to Consolidated Financial Statements (dollars in thousands except per share data) (Unaudited) – continued

Notes, Mortgage Notes and Other Debt – continued

Of the $60,000 principal amount of the Notes called for redemption, $49,913 principal amount of the Notes were redeemed for a total of $50,911 inclusive of redemption premium, plus accrued interest of $1,165. Holders of $10,087 principal amount elected to convert their Notes into 317,199 shares of Avatar's common stock. As a result of this transaction, Avatar recorded a net pre-tax loss of approximately $1,329 in the consolidated statements of operations for the nine and three months ended September 30, 2003. In addition, holders of $352 principal amount of the Notes which were not called for redemption also elected to convert, resulting in the issuance of 11,069 shares of Avatar's common stock. As of September 30, 2003, there was $34,077 principal amount of the Notes outstanding.

On October 24, 2003, Avatar called for redemption on November 25, 2003, all outstanding Notes. The redemption price is $1.02 per $1.00 principal amount of Notes. Rights of holders to effect conversion of the 7% Notes called for redemption will expire at the close of business on November 21, 2003. No interest for the period from October 1, 2003 to the date of conversion will be paid with respect to any Notes that are surrendered for conversion.

On July 31, 2003, Avatar entered into a six-month $30,000 Revolving Line of Credit Facility (the "Short-Term Facility") with an interest rate of LIBOR plus 2.5% which is secured by certain real property with a book value of $38,306 as of September 30, 2003. As of September 30, 2003 Avatar drew and had outstanding $5,000 on the Short-Term Facility.

The lender under the Short-Term Facility, as lead arranger, is syndicating a $100,000 long-term Secured Revolving Line of Credit Facility (the "Long-Term Facility") and has committed to fund up to $40,000 thereof. The Long-Term Facility will be secured by certain real property, including the real property securing the Short-Term Facility, having an aggregate book value of $163,974, as of September 30, 2003. The proceeds may be used for general corporate purposes, the financing of potential land acquisitions, site development and/or construction expenditures. The interest rate for the Long-Term Facility will range from LIBOR plus 2.5% to LIBOR plus 3.0%. Avatar anticipates closing the Long-Term Facility during the fourth quarter of 2003.

Earnings Per Share

Avatar presents earnings per share in accordance with SFAS No. 128, *"Earnings Per Share."* Basic earnings per share is computed by dividing earnings available to common shareholders by the weighted average number of common shares outstanding for the period. Diluted earnings per share reflects the potential dilution that could occur if securities or other contracts to issue common stock were exercised or converted into common stock or resulted in the issuance of common stock that then shared in the earnings of Avatar.

Notes to Consolidated Financial Statements (dollars in thousands except per share data) (Unaudited) – continued

Earnings Per Share — continued

The following table represents a reconciliation of weighted average shares outstanding for the nine and three months ended September 30, 2003 and 2002:

	Nine Months		Three Months	
	2003	2002	2003	2002
Basic weighted average shares outstanding	8,555,728	8,772,042	8,626,439	8,788,358
Effect of dilutive restricted stock	75,000	—	82,500	52,500
Effect of dilutive employee stock options	11,180	—	24,536	2,818
Diluted weighted average shares outstanding	8,641,908	8,772,042	8,733,475	8,843,676

In accordance with SFAS No. 128, the computation of diluted earnings per share for 2003 and 2002 did not assume the conversion of the Notes because the effect is antidilutive. In addition, the diluted earnings per share for the nine months ended September 30, 2002 did not assume the effect of restricted stock and employee stock options because the effect is antidilutive.

Repurchase and Exchange of Common Stock and Notes

From January 1 through May 6, 2003, Avatar repurchased $8,875 of its common stock representing 379,758 shares and $7,585 principal amount of its Notes. On March 20, 2003, Avatar's Board of Directors authorized the expenditure of up to $30,000 to purchase, from time to time, shares of its common stock and/or Notes in the open market, through privately negotiated transactions or otherwise, depending on market and business conditions and other factors. The balance of this authorization as of September 30, 2003 is $26,350.

During the first quarter of 2002, Avatar exchanged 193,000 shares of its common stock for Notes with a face value of $4,667. These transactions were not induced exchanges.

Stock-Based Compensation

Avatar has accounted for stock-based compensation using the intrinsic value based method in accordance with Accounting Principles Board Opinion No. 25, *"Accounting for Stock Issued to Employees"* and related interpretations. For stock options granted, no compensation expense has been recognized because all stock options granted have exercise prices greater than the market value of Avatar's stock on the date of the grant. For restricted stock units granted, compensation expense of $1,260 and $398 has been accrued for the nine and three months ended September 30, 2003, respectively, and compensation expense of $556 and $1 has been accrued for the nine and three months ended September 30, 2002, respectively.

Notes to Consolidated Financial Statements (dollars in thousands except per share data) (Unaudited) – continued

Stock-Based Compensation — continued

SFAS No. 123, as amended by SFAS No. 148, requires disclosure of pro forma income and pro forma income per share as if the fair value based method had been applied in measuring compensation expense. The following table summarizes pro forma net income (loss) and earnings per share in accordance with SFAS No. 123, for the nine and three months ended September 30, 2003 and 2002 had compensation expense for Avatar's option plan been based on fair value at the grant date:

	Nine Months		Three Months	
	2003	2002	2003	2002
Net income (loss) – as reported	$10,779	$(1,376)	$9,034	$ (391)
Deduct: stock-based compensation expense determined using the fair value method, net of related tax effects	(100)	(147)	(46)	—
Pro forma net income (loss)	$10,679	$(1,523)	$8,988	$ (391)
Earnings Per Share:				
Basic				
As reported	$ 1.26	$ (0.16)	$ 1.05	$(0.05)
Pro forma	$ 1.25	$ (0.17)	$ 1.04	$(0.05)
Diluted				
As reported	$ 1.25	$ (0.16)	$ 1.03	$(0.05)
Pro forma	$ 1.24	$ (0.17)	$ 1.03	$(0.05)

Income Taxes

The components of income tax expense (benefit) from continuing operations for the nine and three months ended September 30, 2003, and 2002 are as follows:

	Nine Months		Three Months	
	2003	2002	2003	2002
Current				
Federal	$ 456	$(185)	$ (823)	$(212)
State	77	(31)	(140)	(35)
Total current	533	(216)	(963)	(247)
Deferred				
Federal	(7,596)	(226)	(7,168)	222
State	(1,286)	(38)	(1,214)	39
Total deferred	(8,882)	(264)	(8,382)	261
Total income tax (benefit) expense	$(8,349)	$(480)	$(9,345)	$ 14

During the nine and three months ended September 30, 2003, Avatar recorded a tax benefit of $8,639 as the result of the elimination of certain income tax reserves. The effect of this adjustment on basic earnings per share was $1.01 and $1.00 for the nine and three months ended September 30, 2003, respectively. The effect of this adjustment on diluted earnings per share was $1.00 and $0.99 for the nine and three months ended September 30, 2003, respectively.

Notes to Consolidated Financial Statements (dollars in thousands except per share data) (Unaudited) – continued

Income Taxes — continued

Deferred income taxes reflect the net tax effect of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. Additional paid in capital was credited for $321 representing the benefit of utilizing deferred income tax assets, which were generated in years prior to reorganization on October 1, 1980. Significant components of Avatar's deferred income tax assets and liabilities as of September 30, 2003 and December 31, 2002 are as follows:

	September 30, 2003	December 31, 2002
Deferred income tax assets		
Tax over book basis of land inventory	$ 20,000	$ 21,000
Unrecoverable land development costs	1,000	1,000
Tax over book basis of depreciable assets	2,000	2,000
Other	3,785	3,751
Total deferred income tax assets	26,785	27,751
Valuation allowance for deferred income tax assets	(22,000)	(23,000)
Deferred income tax assets after valuation allowance	$ 4,785	$ 4,751

A reconciliation of income tax expense (benefit) before discontinued operations to the expected income tax expense at the federal statutory rate of 35% for the nine months ended September 30, 2003 and 2002 is as follows:

	2003	2002
Income tax expense computed at statutory rate	$ 851	$(436)
State income tax, net of federal effect	87	(43)
Other, net	352	(1)
Change in valuation allowance on deferred tax assets	(1,000)	—
Elimination of liability for tax related issues	(8,639)	—
Income tax benefit	$(8,349)	$(480)

Joint Venture

In late-December 2002, Avatar entered into a joint venture (the "Joint Venture") in which it has committed to fund up to $25,000 for the development of a 3.5 acre site and construction of a 38-story oceanfront condominium of 240 units in Hollywood, Florida. Avatar has a 50% voting interest in the Joint Venture. Accordingly, Avatar is accounting for its investment in the Joint Venture under the equity method as it evaluates the impact of FASB Interpretation No. 46 *"Consolidation of Variable Interest Entities"* as discussed below in the section titled Recently Issued Accounting Pronouncements. As of September 30, 2003, Avatar funded $19,944 of its commitment to fund the Joint Venture.

Notes to Consolidated Financial Statements (dollars in thousands except per share data) (Unaudited) – continued

Joint Venture — continued

The following is the Joint Venture's balance sheet as of September 30, 2003:

Assets:	
Cash and cash equivalents	$ 717
Restricted cash	11,864
Land and other inventories	27,276
Other assets	1,948
Total assets	$41,805
Liabilities and equity:	
Accounts payable and other liabilities	$12,687
Notes payable	10,950
Equity of:	
Avatar	19,944
Joint venture partner	(200)
Retained earnings (loss)	(1,576)
Total liabilities and equity	$41,805

Avatar's share of the net loss from the Joint Venture is $788 and $189 for the nine and three months ended September 30, 2003, respectively, and is included in real estate expenses in Avatar's accompanying consolidated statements of operations for the nine months and three months ended September 30, 2003.

The following is the Joint Venture's statement of operations for the nine and three months ended September 30, 2003:

	Nine Months	Three Months
Interest and other income	$ 107	$ 80
Costs and expenses	1,683	458
Net loss	$(1,576)	$(378)
Avatar's share of net loss	$ (788)	$(189)

Recently Issued Accounting Pronouncements

In January 2003, the FASB issued Interpretation No. 46 (Interpretation No. 46), *"Consolidation of Variable Interest Entities"* . Interpretation No. 46 expands upon and strengthens Accounting Research Bulletin No. 51, " *Consolidation of Financial Statements"* that addresses when a company should include in its financial statements the assets, liabilities and activities of another entity. The Interpretation requires the consolidation of entities in which an enterprise absorbs a majority of the entity's expected losses, receives a majority of the entity's expected residual returns, or both, as a result of ownership, contractual or other financial interests in the entity. Interpretation No. 46 also requires expanded disclosures by the

Notes to Consolidated Financial Statements (dollars in thousands except per share data) (Unaudited) – continued

Recently Issued Accounting Pronouncements — continued

primary beneficiary, as defined, of a variable interest entity and by an enterprise that holds significant variable interest in a variable interest entity but is not the primary beneficiary. Interpretation No. 46 applies immediately to variable interest entities created after January 31, 2003, and to variable interest entities in which an enterprise obtains an interest after that date. It applies in the first fiscal year or interim period beginning after June 15, 2003, to variable interest entities in which an enterprise holds a variable interest that it acquired before February 1, 2003. However, on October 8, 2003 the FASB deferred the effective date of Interpretation No. 46 for variable interests held by public companies for all entities that were acquired prior to February 1, 2003. The deferral will require the adoption of provisions of Interpretation No. 46 at periods ending after December 15, 2003. Under Interpretation No. 46 a change in a contractual agreement may change the status of a variable interest entity. Avatar has evaluated the Joint Venture and the potential impact of Interpretation No. 46 and believes that consolidation will be determined based upon the availability of construction financing to the Joint Venture. If construction financing is not obtained by December 31, 2003, then Avatar may be required to consolidate the Joint Venture; however, Avatar may be required to unconsolidate when financing is obtained. Currently, the Joint Venture is negotiating construction financing with a third-party lender.

In May 2003, the FASB issued SFAS No. 150, *"Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity."* This statement establishes standards for the classification and measurement of certain financial instruments with characteristics of both liabilities and equity. SFAS No. 150 is effective for the first interim period beginning after June 15, 2003. The implementation of SFAS No. 150 did not have a material impact on Avatar's financial condition, results of operations or cash flows.

Contingencies

Avatar is involved in various pending litigation matters primarily arising in the normal course of its business. Although the outcome of these matters cannot be determined, management believes that the resolution thereof will not have a material effect on Avatar's business or financial statements.

In addition, on July 22, 2003, a holder of the Notes filed a lawsuit against Avatar and certain of its officers in the federal district court of Delaware seeking class action status and alleging that Avatar violated Section 12(a)(2) of the Securities Act of 1933 with respect to its announcement of a partial redemption of $60,000 of the Notes. Avatar believes that the allegations contained in the lawsuit are without merit and intends to take all appropriate actions to vigorously defend its position.

Notes to Consolidated Financial Statements (dollars in thousands except per share data) (Unaudited) – continued

Financial Information Relating To Industry Segments

The following table summarizes Avatar's information for reportable segments for the nine and three months ended September 30, 2003 and 2002:

	Nine Months		Three Months	
	2003	2002	2003	2002
Revenues:				
Segment revenues				
Primary residential communities	$ 99,120	$ 82,257	$32,596	$31,452
Active adult community	52,399	35,101	22,432	11,782
Commercial/industrial and other land sales	6,222	3,803	105	502
All other	6,079	4,984	2,195	1,743
	163,820	126,145	57,328	45,479
Unallocated revenues				
Deferred gross profit	905	965	295	275
Interest income	1,122	2,709	254	932
Other	373	641	117	264
Total revenues	$166,220	$130,460	$57,994	$46,950
Operating income (loss):				
Segment operating income (loss)				
Primary residential communities	$ 14,801	$ 14,443	$ 4,155	$ 6,022
Active adult community	(1,905)	(6,603)	786	(1,969)
Commercial/industrial and other land sales	4,880	1,123	(33)	155
All other	493	943	349	272
	18,269	9,906	5,257	4,480
Unallocated income (expenses)				
Deferred gross profit	905	965	295	275
Interest income	1,122	2,709	254	932
General and administrative expenses	(11,553)	(9,072)	(3,949)	(3,234)
Loss on redemption of 7% Notes	(1,329)	—	(1,329)	—
Interest expense	(1,791)	(2,885)	(325)	(1,483)
Other	(3,193)	(2,869)	(514)	(934)
Income (loss) from continuing operations before income taxes	$ 2,430	$ (1,246)	$ (311)	$ 36

Subsequent Events

On October 21, 2003, Avatar exercised its option to acquire additional land in Poinciana, divided into four phases, and closed on Phase 4 for a purchase price of $7,311. The aggregate purchase price for the remaining phases ranges from approximately $22,500 to $27,700 depending upon the dates of closings thereon. Avatar may close on the remaining phases over a 48-month takedown period, with Phases 1 and 2 to be taken down within 29 months and Phase 3 within 48 months. These properties are planned for the overall future development of the Poinciana community.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations (dollars in thousands except per share data)

RESULTS OF OPERATIONS

In the preparation of its financial statements, Avatar applies accounting principles generally accepted in the United States of America. The application of generally accepted accounting principles may require management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying results. For a description of Avatar's accounting policies, refer to Avatar Holdings Inc.'s 2002 Annual Report on Form 10-K.

The following discussion of Avatar's financial condition and results of operations should be read in conjunction with the consolidated financial statements and notes thereto included elsewhere in this Form 10-Q.

Data from primary residential and active adult communities homebuilding operations for the nine and three months ended September 30, 2003 and 2002 is summarized as follows:

	Nine Months		Three Months	
	2003	2002	2003	2002
Units closed				
Number of units	790	685	274	244
Aggregate dollar volume	$147,917	$114,268	$ 53,625	$42,286
Average price per unit	$ 187	$ 167	$ 196	$ 173
Contracts signed, net of cancellations				
Number of units	1,418	903	608	326
Aggregate dollar volume	$277,401	$163,551	$114,831	$54,237
Average price per unit	$ 196	$ 181	$ 189	$ 166

	September 30,	
	2003	2002
Backlog		
Number of units	1,441	756
Aggregate dollar volume	$295,870	$157,013
Average price per unit	$ 205	$ 208

Results for Avatar's active adult community, Solivita, included in the above table for the nine and three months ended September 30, 2003 are: 408 and 111 contracts written with an aggregate sales volume of $83,623 and $23,194, respectively; 277 and 115 homes closed, generating revenues from Solivita homebuilding operations of $49,825 and $21,554, respectively. Results for Solivita included in the above table for the nine and three months ended September 30, 2002, are: 357 and 119 contracts written with an aggregate sales volume of $60,740 and $19,693, respectively; 204 and 69 homes closed, generating revenues from Solivita homebuilding operations of $33,277 and $11,243, respectively. Backlog at September 30, 2003 and 2002 totaled 483 units at $95,389 and 339 units at $57,964, respectively.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations (dollars in thousands except per share data) –continued

RESULTS OF OPERATIONS – continued

Net income for the nine and three months ended September 30, 2003 was $10,779 or $1.25 per diluted share ($1.26 per basic share) and $9,034 or $1.03 per diluted share ($1.05 per basic share), respectively, compared to a net loss of $1,376 or $0.16 per diluted and basic share and $391 or $0.05 per diluted and basic share for the same periods in 2002. The increase in net income for the nine and three months ended September 30, 2003, as compared to the same period in 2002, was primarily due to the recording of a tax benefit of $8,639 as the result of the elimination of certain income tax reserves. The effect of this adjustment on basic earnings per share was $1.01 and $1.00 for the nine and three months ended September 30, 2003, respectively. The effect of this adjustment on diluted earnings per share was $1.00 and $0.99 for the nine and three months ended September 30, 2003, respectively. Also contributing to the increase in net income for the nine and three months ended September 30, 2003, was an increase in real estate operating results, partially mitigated by a decrease in interest income, a loss of $1,329 on redemption of the 7% Notes and an increase in general and administrative expenses.

Real estate revenues for the nine and three months ended September 30, 2003 increased $37,432 or 29.9% and $11,704 or 25.9% respectively, when compared to the same periods in 2002. The increase in real estate revenues is generally a result of increased revenues generated from active adult operations, primary residential communities operations, and commercial and industrial land sales. Revenues from active adult community operations for the nine and three months ended September 30, 2003 increased $17,298 or 49.3% and $10,650 or 90.4%, respectively, due primarily to increased closings when compared to the same periods in 2002. Revenues from primary residential communities for the nine months ended September 30, 2003 increased $16,863 or 20.5% due to increased closings at Poinciana and Rio Rico and an increase in the average price per unit of closings at Poinciana, Harbor Islands and Rio Rico. Revenues from primary residential communities for the three months ended September 30, 2003 increased $1,144 or 3.6% due to an increase in the average price per unit of closings at Poinciana, Harbor Islands and Rio Rico.

Real estate expenses for the nine and three months ended September 30, 2003 increased $29,147 or 24.6% and $10,485 or 25.1% when compared to the same periods in 2002. These increases are generally related to the increase in the number of closings as well as the portion thereof which are larger semi-custom products. The increase for the nine months generally relates to increased closings at Poinciana, Solivita, Rio Rico and semi-custom products at Harbor Islands. The increase for the three months generally relates to increased closings at Solivita. Also contributing to the increase in real estate expenses for the nine and three month periods are start up operating expenses from Bellalago, Cory Lake Isles and the Joint Venture, totaling $4,490 and $1,717, respectively.

Interest income for the nine and three months ended September 30, 2003 decreased $1,587 or 58.6% and $678 or 72.8% when compared to the same periods in 2002. This decrease is attributed to lower interest rates and lower interest income earned on lower available cash and declining principal balances of contracts receivable.

General and administrative expenses for the nine and three months ended September 30, 2003 increased $2,481 or 27.4% and $715 or 22.1% as compared to the same periods in 2002. The increase is primarily due to increases in executive compensation related to new hires, incentive compensation and salary increases; professional fees; and insurance.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations (dollars in thousands except per share data) –continued

RESULTS OF OPERATIONS – continued

Interest expense for the nine and three months ended September 30, 2003 decreased $1,094 or 37.9% and $1,158 or 78.1% when compared to the same periods in 2002. This decrease is primarily a result of reduced interest expense on the 7% Notes due to the $60,000 principal partial redemption on July 31, 2003.

During the third quarter of 2003, Avatar recorded a tax benefit of $8,639 as the result of the elimination of certain income tax reserves. Excluding the $8,639 benefit recognition, income tax expense was provided for at an effective tax rate of 11.9% and (227.0%) for the nine and three months ended September 30, 2003, respectively, as compared to an effective tax rate of 38.5% and 38.5% for the same periods in 2002. The change in effective tax rates for the nine and three months ended September 30, 2003, is due to an overprovision of 2002 income taxes.

LIQUIDITY AND CAPITAL RESOURCES

Avatar's real estate business strategy is designed to capitalize on its distinct competitive advantages and emphasize higher profit margin businesses by concentrating on the development and management of active adult communities, semi-custom and mid-priced homes and communities, and commercial and industrial properties in its existing community developments. Avatar also seeks to identify additional sites that are suitable for development consistent with its business strategy and anticipates that it will acquire or develop them directly or through joint venture, partnership or management arrangements. Avatar's primary business activities are capital intensive in nature. Significant capital resources are required to finance planned primary residential and active adult communities, homebuilding construction in process, community infrastructure, selling expenses and working capital needs, including funding of debt service requirements, operating deficits and the carrying cost of land.

Subsequent to the issuance of the Notes in 1998 and sales of substantial non-core assets in 1999, Avatar has funded its operations through internal sources. From time to time Avatar invests some portion of its cash in marketable securities or considers potential business opportunities that may require use of available cash resources.

Avatar's operating cash flows fluctuate relative to the status of development within its existing communities, development expenditures for new and/or planned communities or other real estate activities and sales of various homebuilding product lines within those communities. From time to time Avatar has generated, and may continue to generate, additional cash flow through sales of non-core assets.

From January 1 through May 6, 2003, Avatar repurchased $8,875 of its common stock representing 379,758 shares and $7,585 principal amount of its Notes. On March 20, 2003, Avatar's Board of Directors authorized the expenditure of up to $30,000 to purchase, from time to time, shares of its common stock and/or Notes in the open market, through privately negotiated transactions or otherwise, depending on market and business conditions and other factors. The balance of this authorization as of September 30, 2003 is $26,350.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations (dollars in thousands except per share data) –continued

LIQUIDITY AND CAPITAL RESOURCES – continued

On July 1, 2003, Avatar called for partial redemption on July 31, 2003, of $60,000 of the $94,429 in aggregate principal amount outstanding of its 7% Convertible Subordinated Notes due April 2005 (the "Notes"). The redemption price was $1.02 per $1.00 principal amount, plus accrued interest from April 1, 2003 to the redemption date.

The Notes are convertible into Avatar's common stock at a conversion price of $31.80 per share, or 31.447 shares per $1.00 principal amount of the Notes. Rights of holders to effect conversion of the Notes called for redemption expired at the close of business on July 29, 2003. No interest for the period from April 1, 2003 to the date of conversion was paid with respect to any Notes that were surrendered for conversion.

Of the $60,000 principal amount of the Notes called for redemption, $49,913 principal amount of the Notes were redeemed for a total of $50,911 inclusive of redemption premium, plus accrued interest of $1,165. Holders of $10,087 principal amount elected to convert their Notes into 317,199 shares of Avatar's common stock. As a result of this transaction, Avatar recorded a net pre-tax loss of approximately $1,329 in the consolidated statements of operations for the nine and three months ended September 30, 2003. In addition, holders of $352 principal amount of the Notes which were not called for redemption also elected to convert, resulting in the issuance of 11,069 shares of Avatar's common stock. As of September 30, 2003, there was $34,077 principal amount of the Notes outstanding.

On October 24, 2003, Avatar called for redemption on November 25, 2003, all outstanding Notes. The redemption price is $1.02 per $1.00 principal amount of Notes. Rights of holders to effect conversion of the 7% Notes called for redemption will expire at the close of business on November 21, 2003. No interest for the period from October 1, 2003 to the date of conversion will be paid with respect to any Notes that are surrendered for conversion.

In anticipation of expenditures for new projects in addition to expenditures for completion of development at Solivita, Harbor Islands, Bellalago and Cory Lake Isles, as well as the balance of the commitment to fund development and construction of Ocean Palms, Avatar deemed it appropriate to seek financing arrangements in order to capitalize on current operations, to fund additional opportunities and to fund corporate matters such as the redemption of 7% Notes.

On July 31, 2003, Avatar entered into a six-month $30,000 Revolving Line of Credit Facility (the "Short-Term Facility") with an interest rate of LIBOR plus 2.5% which is secured by certain real property with a book value of $38,306 as of September 30, 2003. As of September 30, 2003 Avatar drew and had outstanding $5,000 on the Short-Term Facility and intends to fund the redemption of the Notes with available cash and/or this facility.

The lender under the Short-Term Facility, as lead arranger, is syndicating a $100,000 long-term Secured Revolving Line of Credit Facility (the "Long-Term Facility") and has committed to fund up to $40,000 thereof. The Long-Term Facility will be secured by certain real property, including the real property securing the Short-Term Facility, having an aggregate book value of $163,974, as of September 30, 2003. The proceeds may be used for general corporate purposes, the financing of potential land acquisitions, site development and/or construction expenditures. The interest rate for the Long-Term Facility will range from LIBOR plus 2.5% to LIBOR plus 3.0%. Avatar anticipates closing the Long-Term Facility during the fourth quarter of 2003.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations (dollars in thousands except per share data) –continued

LIQUIDITY AND CAPITAL RESOURCES – continued

During the third quarter, Avatar closed on the acquisition of land in Poinciana for a purchase price of $8,484. These properties are adjacent to Solivita and will be utilized primarily for the future expansion of Solivita. On October 21, 2003, Avatar exercised its option to acquire additional land in Poinciana, divided into four phases, and closed on Phase 4 for a purchase price of $7,311. The aggregate purchase price for the remaining phases ranges from approximately $22,500 to $27,700 depending upon the dates of closings thereon. Avatar may close on the remaining phases over a 48-month takedown period, with Phases 1 and 2 to be taken down within 29 months and Phase 3 within 48 months. These properties are planned for the overall future development of the Poinciana community.

As of September 30, 2003, cash and cash equivalents totaled approximately $32,705. However, as a result of expenditures subsequent to September 30, 2003 for the acquisition of land in Poinciana, continued start up expenditures at Bellalago and Cory Lake Isles, funding the investment in the high-rise condominium project, cash and cash equivalents were reduced to $19,000 as of October 31, 2003.

For the nine months ended September 30, 2003, net cash used in operating activities amounted to $481. Net cash used in investing activities of $21,760 resulted from investments in the Joint Venture and property, plant and equipment of $19,944 and $1,816, respectively. Net cash used in financing activities of $63,893 resulted from the redemption of $49,913 and repurchase of $7,585 of the Notes, the purchase of $8,875 of treasury stock, the repayment of real estate debt of $2,206, partially mitigated by $5,000 in proceeds from a revolving line of credit.

For the nine months ended September 30, 2002, net cash provided by operating activities amounted to $11,072, primarily as a result of an increase in accounts payable and accrued and other liabilities of $7,827 and a decrease in other assets of $1,929. Net cash used in investing activities of $4,952 resulted from investments in property, plant and equipment of $2,775 and the acquisition of property of $2,177. Net cash used in financing activities of $666 resulted from the repayment of notes payable.

FORWARD–LOOKING STATEMENTS

Certain of the matters discussed under the caption "Management's Discussion and Analysis of Financial Condition and Results of Operations" and elsewhere in this Form 10-Q constitutes "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Such forward-looking statements involve known and unknown risks, uncertainties and other important factors that could cause the actual results, performance or achievements of results, to differ materially from any future results, performance or achievements expressed or implied by such forward-looking statements. Such risks, uncertainties and other important factors include, among others: the successful implementation of Avatar's business strategy; shifts in demographic trends affecting demand for active adult communities and other real estate development; the level of immigration and in-migration to Avatar's regional market areas; international (in particular Latin America), national and local economic conditions and events, including employment levels, interest rates, consumer confidence, the availability of mortgage financing and demand for new and existing housing; access to future financing; geopolitical risks; competition; changes in, or the failure or inability to comply with, government regulations; and other factors as are described in greater detail in Avatar's filings with the Securities and Exchange Commission, including its Annual Report on Form 10-K for the fiscal year ended December 31, 2002.

Item 3. Quantitative and Qualitative Disclosure About Market Risk

There has been no material changes in Avatar's market risk during the nine months ended September 30, 2003. For additional information regarding Avatar's market risk, refer to Item 7A, Quantitative and Qualitative Disclosures About Market Risk, in Avatar's 2002 Annual Report on Form 10-K.

Item 4. Controls and Procedures

Avatar's management evaluated, with the participation of Avatar's principal executive and principal financial officers, the effectiveness of Avatar's disclosure controls and procedures (as defined in Rules13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")), as of September 30, 2003. Based on their evaluation, Avatar's principal executive and principal financial officers concluded that Avatar's disclosure controls and procedures were effective as of September 30, 2003.

There has been no change in Avatar's internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) that occurred during Avatar's fiscal quarter ended September 30, 2003, that has materially affected, or is reasonably likely to materially affect, Avatar's internal control over financial reporting.

PART II — OTHER INFORMATION

Item 1. Legal Proceedings

On July 22, 2003, a holder of the Notes filed a lawsuit against Avatar and certain of its officers in the federal district court of Delaware seeking class action status and alleging that Avatar violated Section 12(a)(2) of the Securities Act of 1933 with respect to its announcement of a partial redemption of $60,000 of the Notes. Avatar believes that the allegations contained in the lawsuit are without merit and intends to take all appropriate actions to vigorously defend its position.

Item 6. Exhibits and Reports on Form 8-K

Exhibits

10.1 Employment Agreement, dated as of September 11, 2003, between Avatar Holdings Inc. and Dennis J. Getman (filed herewith). Portions of this exhibit have been omitted pursuant to a request for confidential treatment.

10.2 Restricted Stock Unit Agreement, dated as of September 11, 2003 between Avatar Holdings Inc. and Dennis J. Getman (filed herewith).

31.1 Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (filed herewith).

31.2 Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (filed herewith).

32.1 Certification of Chief Executive Officer required by 18 U.S.C. Section 1350 (as adopted by Section 906 of the Sarbanes-Oxley Act of 2002) (furnished herewith).

32.2 Certification of Chief Financial Officer required by 18 U.S.C. Section 1350 (as adopted by Section 906 of the Sarbanes-Oxley Act of 2002) (furnished herewith).

Reports on Form 8-K

The following reports on Form 8-K were furnished during the quarter for which this report is filed:

Current Report on Form 8-K on July 1, 2003 (Item 12), Avatar’s press release announcing the partial redemption of its 7% Notes.

Current Report on Form 8-K on July 16, 2003 (Item 12), Avatar’s press release announcing the acquisition of land in Polk County, Florida.

Current Report on Form 8-K on July 24, 2003 (Item 12), Avatar’s press release announcing its quarter results for the six and three months ended June 30,2003.

Current Report on Form 8-K on August 1, 2003 (Item 12), Avatar’s press release announcing results of partial redemption of 7% Notes.

Table of Contents

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

AVATAR HOLDINGS INC

Date: November 10, 2003

By: /s/ Charles L. McNairy

Charles L. McNairy
Executive Vice President, Treasurer and
Chief Financial Officer

Date: November 10, 2003

By: /s/ Michael P. Rama

Michael P. Rama
Controller and Chief Accounting Officer

Table of Contents

Exhibit Index

10.1	Employment Agreement, dated as of September 11, 2003, between Avatar Holdings Inc. and Dennis J. Getman (filed herewith). Portions of this exhibit have been omitted pursuant to a request for confidential treatment.
10.2	Restricted Stock Unit Agreement, dated as of September 11, 2003 between Avatar Holdings Inc. and Dennis J. Getman (filed herewith).
31.1	Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (filed herewith).
31.2	Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (filed herewith).
32.1	Certification of Chief Executive Officer required by 18 U.S.C. Section 1350 (as adopted by Section 906 of the Sarbanes-Oxley Act of 2002) (furnished herewith).
32.2	Certification of Chief Financial Officer required by 18 U.S.C. Section 1350 (as adopted by Section 906 of the Sarbanes-Oxley Act of 2002) (furnished herewith).

EXHIBIT 10.1

CONFIDENTIAL PORTION MARKED [**********] HAS BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.

EMPLOYMENT AGREEMENT

EMPLOYMENT AGREEMENT, dated September 11, 2003, between Avatar Holdings Inc., a Delaware corporation (the "Company"), and Dennis J. Getman (the "Employee").

W I T N E S S E T H :

WHEREAS, the Company desires to employ the Employee as its Executive Vice President and General Counsel and the Employee desires to accept such employment, all on the terms and conditions specified herein; and

WHEREAS, the Employee and the Company desire to set forth in writing all of their respective duties, rights and obligations with respect to the Employee's employment by the Company; and

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and obligations hereinafter set forth, the parties hereto, intending to be legally bound, hereby agree as follows:

1. EMPLOYMENT AND TERM. The Company hereby employs the Employee, and the Employee hereby accepts employment by the Company, in the capacity and upon the terms and conditions hereinafter set forth. The term of employment under this Agreement shall be for the period commencing as of January 1, 2003 and ending on December 31, 2006, unless earlier terminated as herein provided (the "Term of Employment"). The last day of the Employee's Term of Employment shall be referred to in this Agreement as the "Date of Termination."

2. DUTIES. (a) During the Term of Employment, the Employee shall serve as the Company's Executive Vice President and General Counsel, and shall perform such duties, functions and responsibilities as are associated with and incident to the positions of Executive Vice President and General Counsel, consistent with the Employee's current duties, functions and responsibilities, in accordance with past practice, and as the Company may, from time to time, require of the Employee, including, but not limited to, the performance of such functions and duties for the Company's subsidiaries and affiliates as the Company may require, subject to the direction of the Company's Board of Directors. The Employee shall serve the Company faithfully, conscientiously and to the best of the Employee's ability and shall promote the interests and

reputation of the Company. Unless prevented by sickness or disability, the Employee shall devote all of the Employee's time, attention, knowledge, energy and skills, during normal working hours, and at such other times as the Employee's duties may require, to the duties of the Employee's employment. The principal place of employment of the Employee shall be the principal executive offices of the Company and/or such other location in the state of Florida as shall be necessary for the Employee to discharge the Employee's duties hereunder. The Employee acknowledges that in the course of employment the Employee may be required, from time to time, to travel on behalf of the Company.

(b) The Employee and the Company acknowledge that the Employee has been engaged in sales of non-buildable or environmentally sensitive land and specially designated asset sales made outside the Company's ordinary course of business, as determined by the Company. In addition to the duties described above, the Employee shall continue to be engaged in such sales as requested and determined by management of the Company.

3. COMPENSATION AND BENEFITS. As full and complete compensation for the Employee's execution and delivery of this Agreement and performance of any services hereunder, the Company shall pay, grant or provide the Employee, and the Employee agrees to accept, the following compensation and benefits:

(a) BASE SALARY. The Company shall pay the Employee a base salary at an annual rate of $350,000 payable at such times and in accordance with the Company's customary payroll practices as they may be adopted or modified from time to time. On an annual basis or at such other times as the Company may determine, the Company may review the Employee's performance and determine whether, in its sole discretion, the Company will increase (but not decrease) the Employee's base salary.

(b) EMPLOYEE BENEFITS. The Company shall afford the Employee the opportunity to participate during the Term of Employment in any medical, dental, disability insurance, retirement, savings and any other employee benefits plans, policies or arrangements which the Company maintains for its senior executives in accordance with the written terms of such plans, policies or arrangements. Nothing in this Agreement shall require the Company or its affiliates to establish, maintain or continue any benefit plan, policy or arrangement or restrict the right of the Company or any of its affiliates to amend, modify or terminate any such benefit plan, policy or arrangement.

(c) EXPENSES. The Employee shall be entitled to reimbursement or payment of reasonable business expenses (in accordance with the Company's policies for its senior executives, as the same may be amended from time to time in the Company's sole discretion), following the Employee's submission of appropriate receipts and/or vouchers to the Company.

(d) VACATIONS, HOLIDAYS OR TEMPORARY LEAVE. The Employee shall be entitled to take four (4) weeks of vacation per year, without loss or diminution of compensation. Such vacation shall be taken at such time or times, and as a whole or in increments, as the Employee shall elect, consistent with

the reasonable needs of the Company's business. The Employee shall further be entitled to the number of paid holidays, and leaves for illness or temporary disability in accordance with the policies of the Company for its senior executives (as such policies may be amended from time to time or terminated in the Company's sole discretion).

(e) ADDITIONAL COMPENSATION. As compensation for the additional duties set forth in Section 2(b) above, the Employee shall be entitled to the additional compensation set forth on the Annex attached hereto.

(f) COMPANY VEHICLE. During the Term of Employment, the Company shall provide the Employee with the use of a vehicle associated with the Employee's employment consistent with past practice.

4. PROTECTION OF CONFIDENTIAL INFORMATION.

(a) TRADE SECRETS AND KNOW-HOW.

(i) During the Term of Employment and for all time following the Date of Termination, the Employee shall not, directly or indirectly, use, furnish or make accessible to any person, firm or corporation or other business entity, whether or not he, she, or it competes with the business of the Company, its subsidiaries and/or affiliates (each of the foregoing entities being referred to herein, collectively and individually, as the "Avatar Entities"), (x) any trade secret or know-how acquired by the Employee during the Employee's employment by the Company which relates to the business practices, methods, processes or other confidential or secret aspects of the business of any of the Avatar Entities, (y) any information concerning the business and affairs of the Avatar Entities and (z) any notes, analysis, compilations, studies, summaries and other material prepared by or for the Company continuing or based, in whole or in part, on any information included in clause (x) or (y) above, without the prior written consent of the Company (such information, subject to Section 4(a)(ii) below, being referred to as the "Confidential Information").

(ii) Confidential Information shall not include any information or documents that (A) are or become publicly available without breach by the Employee of Section 4(a)(i) hereof, (B) the Employee receives from any third party who, to the best of the Employee's knowledge upon reasonable inquiry, is not in breach of an obligation of confidence with any of the Avatar Entities, or (C) is required to be disclosed by law, statute, governmental or judicial proceeding; PROVIDED, HOWEVER, that in the event that the Employee is requested by any governmental or judicial authority to disclose any Confidential Information, the Employee shall give the Company prompt notice of such request, such that the Company may seek a protective order or other appropriate relief, and in any such proceeding the Employee shall disclose only so much of the Confidential Information as is required to be disclosed.

(b) REMEDIES. The Employee acknowledges that the Employee's position with the Company places the Employee in a position of confidence and trust with the clients and employees of the Avatar Entities, and that in connection with the Employee's services to the Company, the Employee will have access to confidential information vital to the Avatar Entities' businesses. The Employee further acknowledges that in view of the nature of the businesses in which the Avatar Entities are engaged, the foregoing restrictive covenants in this Section 4 hereof are reasonable and necessary in order to protect the legitimate interests of the Avatar Entities and that violation thereof would result in irreparable injury to the Avatar Entities. Accordingly, the Employee consents and agrees that if the Employee violates or threatens to violate any of the provisions of this Section 4 hereof the Avatar Entities would sustain irreparable harm and, therefore, one or more of the Avatar Entities shall be entitled to obtain from any court of competent jurisdiction, without posting any bond or other security, preliminary and permanent injunctive relief as well as damages and an equitable accounting of all earnings, profits and other benefits arising from such violation, which rights shall be cumulative and in addition to any other rights or remedies in law or equity to which any of the Avatar Entities may be entitled.

(c) RETURN OF CONFIDENTIAL INFORMATION. Upon termination of the Employee's employment, the Employee shall promptly return all Confidential Information in tangible form, and shall not make or retain any copies thereof.

5. TERMINATION OF EMPLOYMENT.

(a) The Employee's employment with the Company hereunder shall terminate upon the occurrence of any of the following events:

(i) the termination of the Employee's employment upon and at any time following December 31, 2006, absent the parties having entered into a written agreement of Employment with a term of employment ending after December 31, 2006;

(ii) the death of the Employee during the Term of Employment;

(iii) the Disability (as defined below) of the Employee during the Term of Employment;

(iv) at any time upon written notice to the Employee from the Company of termination of the Employee's employment for Cause (as defined below);

(v) at any time upon written notice to the Employee from the Company of termination of the Employee's employment Without Cause (as defined below);

(vi) the resignation or other withdrawal of employment by the Employee for any reason during the Term of Employment.

(b) For purposes of this Agreement, the "Disability" of the Employee shall mean the Employee's inability, because of mental or physical illness or incapacity, whether total or partial, to perform one or more of the material functions of the Employee's employment under this Agreement with or without reasonable accommodation and which entitles the Employee to receive benefits under a disability plan, policy or arrangement that is provided to the Employee by the Company.

(c) For purposes of this Agreement, the term "Cause" shall mean the Employee's (i) conviction or entry of a plea of guilty or nolo contendere, with respect to any felony; (ii) commission of any act of willful misconduct, gross negligence, fraud or dishonesty; or (iii) violation of any material term of this Agreement or any material written policy of the Company, PROVIDED that in the case of clause (iii), the Company first deliver written notice thereof to the Employee and the Employee shall not have cured such violation within thirty (30) days after receipt of such written notice.

(d) For purposes of this Agreement, "Without Cause" shall mean any reason other than the reasons described in Sections 5(a)(i), (ii), (iii), (iv) and (vi) hereof. The parties expressly agree that a termination of employment Without Cause pursuant to Section 5(a)(v) hereof may be for any reason whatsoever, or for no reason, in the sole discretion of the Company.

6. PAYMENTS UPON TERMINATION OF EMPLOYMENT.

(a) DEATH OR DISABILITY. If the Employee's employment hereunder is terminated due to the Employee's death or Disability pursuant to Sections 5(a)(ii) or (iii) hereof, the Company shall pay or provide to the Employee, the Employee's designated beneficiary or to the Employee's estate: (i) all base salary pursuant to Section 3(a) hereof and any vacation pay pursuant to Section 3(d) hereof, in each case which has been earned but unpaid as of the Date of Termination; (ii) any benefits to which the Employee may be entitled under any employee benefits plan, policy or arrangement pursuant to Section 3(b) hereof in which the Employee is a participant in accordance with the written terms of such plan, policy or arrangement up to and including the Date of Termination; and
(iii) any additional compensation to which the Employee may be entitled as set forth on the Annex attached hereto. Should the Company wish to purchase insurance to cover the costs associated with the Employee's termination of employment pursuant to Sections 5(a)(ii) or (iii), the Employee agrees to execute any and all necessary documents required in connection with such insurance.

(b) TERMINATION FOR CAUSE OR RESIGNATION BY THE EMPLOYEE. If the Employee's employment hereunder is terminated by the Company for Cause pursuant to Section 5(a)(iv) or due to the Employee's resignation or other withdrawal of employment pursuant to Section 5 (a)(vi), the Company shall pay or provide to the Employee: (i) all base salary pursuant to Section 3(a) hereof and any vacation pay pursuant to Section 3(d) hereof, in each case which has been earned but unpaid as of the Date of Termination; and (ii) any benefits to which the Employee may be entitled under any employee benefits plan, policy or arrangement

pursuant to Section 3(b) hereof in which the Employee is a participant in accordance with the written terms of such plan, policy or arrangement up to and including the Date of Termination.

(c) TERMINATION WITHOUT CAUSE. If the Employee's employment hereunder is terminated by the Company Without Cause pursuant to Section 5(a)(v), the Company shall pay or provide to the Employee: (i) all base salary pursuant to Section 3(a) hereof and any vacation pay pursuant to Section 3(d) hereof, in each case which has been earned but unpaid as of the Date of Termination; (ii) any benefits to which the Employee may be entitled under any employee benefits plan, policy or arrangement pursuant to Section 3(b) hereof in which the Employee is a participant in accordance with the written terms of such plan, policy or arrangement up to and including the Date of Termination; (iii) any additional compensation to which the Employee may be entitled as set forth on the Annex attached hereto; and (iv) a lump sum payment of $350,000 in lieu of any other payments or benefits. The Company's obligation to make the payment pursuant to this Section 6(c) shall be conditioned upon the Company's prior receipt of an executed general release of claims that the Employee may have against the Company, its affiliates and their respective shareholders, directors, officers, employees and agents, to the maximum extent permitted by law. Any payments made pursuant to Section 6(c)(i), (ii) and (iv) shall be made within ninety (90) days of the termination of Employee's employment.

(d) TERMINATION UPON EXPIRATION OF THIS AGREEMENT. If the Employee's employment hereunder is terminated pursuant to Section 5(a)(i) and the Employee is no longer actively employed (whether or not pursuant to an employment agreement) by the Company, the Company shall pay to the Employee any additional compensation to which the Employee may be entitled as set forth on the Annex attached hereto.

(e) NO OTHER PAYMENTS. Except as provided in this Section 6, the Employee shall not be entitled to receive any other payments or benefits from the Company due to the termination of the Employee's employment, including but not limited to, any employee benefits under any of the Company's employee benefits plans or programs (other than at the Employee's expense under the Consolidated Omnibus Budget Reconciliation Act of 1985 or pursuant to the terms of any pension benefit plan which the Company may have in effect from time to time) or any right to be paid severance pay. If the Employee is entitled to any notice or payment in lieu of any notice of termination required by Federal, State or local law, including but not limited to the Worker Adjustment and Retraining Notification Act, the Company's obligation to make payments pursuant to Section 6(c)(i) shall be reduced by the amount of any such payment in lieu of notice.

7. NO CONFLICTING AGREEMENTS.

(a) The Employee hereby represents and warrants that the Employee is not a party to any agreement, or non-competition or other covenant or restriction contained in any agreement, commitment, arrangement or understanding (whether oral or written), which would in any way conflict with or limit the

Employee's ability to commence work on the first day of the Term of Employment or would otherwise limit the Employee's ability to perform all responsibilities in accordance with the terms and subject to the conditions of this Agreement.

(b) The Employee agrees that the compensation provided for in Section 3 hereto represents the sole compensation to be paid to the Employee in respect of the services performed or to be performed for the Company and/or its affiliates by such Employee. The Employee further agrees that should there be a determination that for federal, state, local and/or other tax purposes, the Employee's compensation for services performed for the Company and its affiliates is greater than the amounts payable hereunder, the Employee will indemnify and hold harmless the Company and its affiliates against any and all liabilities, losses and expenses, including, but not limited to, any additional taxes, penalties and interest, and attorneys' and accountants' fees arising out of, resulting from or relating to such determination.

8. DEDUCTIONS AND WITHHOLDING. The Employee agrees that the Company shall withhold from any and all compensation required to be paid to the Employee pursuant to this Agreement all federal, state, local and/or other taxes which the Company determines are required to be withheld in accordance with applicable statutes and/or regulations from time to time in effect and all amounts required to be deducted in respect of the Employee's coverage under applicable employee benefit plans.

9. ENTIRE AGREEMENT. This Agreement embodies the entire agreement of the parties with respect to the Employee's employment and supersedes any other prior oral or written agreements between the Employee and the Company and its affiliates. This Agreement may not be changed or terminated orally but only by an agreement in writing signed by the parties hereto.

10. WAIVER. The waiver by the Company of a breach of any provision of this Agreement by the Employee shall not operate or be construed as a waiver of any subsequent breach by the Employee. The waiver by the Employee of a breach of any provision of this Agreement by the Company shall not operate or be construed as a waiver of any subsequent breach by the Company.

11. GOVERNING LAW. This Agreement shall be subject to, and governed by, the laws of the State of Florida applicable to contracts made and to be performed in the State of Florida, regardless of where the Employee is in fact required to work.

12. JURISDICTION. Any legal suit, action or proceeding against any party hereto arising out of or relating to this Agreement shall be instituted in a federal or state court in the State of Florida, and each party hereto waives any objection which it may now or hereafter have to the laying of venue of any such suit, action or proceeding and each party hereto irrevocably submits to the jurisdiction of any such court in any suit, action or proceeding.

13. ASSIGNABILITY. The obligations of the Employee may not be delegated and, except as expressly provided in Section 6(a) relating to the designation of beneficiaries, the Employee may not, without the Company's written consent thereto, assign, transfer, convey, pledge, encumber, hypothecate or otherwise dispose of this Agreement or any interest therein. Any such attempted delegation or disposition shall be null and void and without effect. The Company and the Employee agree that this Agreement and all of the Company's rights and obligations hereunder may be assigned or transferred by the Company to and may be assumed by and become binding upon and may inure to the benefit of any affiliate of or successor to the Company. The term "successor" shall mean (with respect to the Company or any of its subsidiaries) any other corporation or other business entity which, by merger, consolidation, purchase of the assets, or otherwise, acquires all or a material part of the assets of the Company. Any assignment by the Company of its rights and obligations hereunder to any affiliate of or successor to the Company shall not be considered a termination of employment for purposes of this Agreement.

14. SEVERABILITY. If any provision of this Agreement as applied to either party or to any circumstances shall be adjudged by a court of competent jurisdiction to be void or unenforceable, the same shall in no way affect any other provision of this Agreement or the validity or enforceability of this Agreement.

15. NOTICES. All notices to the Employee hereunder shall be in writing and shall be delivered personally or sent by registered or certified mail, return receipt requested, to:

Dennis J. Getman 848 Brickell Key Drive Unit 3601
Miami, Florida 33131

All notices to the Company hereunder shall be in writing and shall be delivered personally or sent by registered or certified mail, return receipt requested, to:

Avatar Holdings Inc. 201 Alhambra Circle Coral Gables, Florida 33134 Attention: Chief Executive Officer Facsimile: (305) 441-7876

with a copy to:

Avatar Holdings Inc. 201 Alhambra Circle Coral Gables, Florida 33134 Attention: Corporate Secretary Facsimile: (305) 441-7876

Either party may change the address to which notices shall be sent by sending written notice of such change of address to the other party.

16. SECTION HEADINGS. The section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

17. COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which taken together shall constitute one and the same instrument.

18. PREVAILING PARTY EXPENSES. The Employee and the Company agree that in the event that any provision of this Agreement becomes subject to any litigation or arbitration or any party seeks an adjudication to enforce his rights under, or to recover damages for breach of, this Agreement, the prevailing party in such litigation or arbitration shall be entitled to recover all costs and expenses (including reasonable legal fees) incurred in connection therewith from the other party.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first above written.

AVATAR HOLDINGS INC.

By: /s/ GERALD D. KELFER

Name: Gerald D. Kelfer
Title: President and Chief Executive Officer

/s/ DENNIS J. GETMAN

Employee
Name: Dennis J. Getman

Annex To Employment Agreement

Terms of Additional Compensation

1. The Employee will be awarded an opportunity to receive (x) a percentage (the "Percentage") of the Net Sale Proceeds (as defined below) received by the Company on certain asset sales of non-buildable or environmentally sensitive land and specially designated asset sales (the "Eligible Properties") that are made outside of the Company's ordinary course of business, as determined by the Company, during the Employee's Term of Employment less (y) the Deductible (as defined below), subject to the Employee's active involvement and engagement in procuring such sales for the benefit of the Company (the "Additional Compensation"). Notwithstanding anything to the contrary contained herein, the maximum aggregate Additional Compensation payable to the Employee hereunder is $1,600,000 (the "Aggregate Cap").

2. For purposes of this Annex, capitalized terms not otherwise defined shall have the following meanings:

"Net Sale Proceeds" shall mean the sale proceeds actually received by the Company less any and all expenses and costs related to the sale (including closing costs) and any expenditures made by the Company in contemplation of, or in connection with, such sale.

"Deductible" for any calendar year shall mean an amount equal to (i) the product of (x) $100,000 and (y) the Calendar Year Multiplier less (ii) the sum of Deductibles in prior calendar years (to the extent that each such Deductible did not reduce Additional Compensation for such prior year below 0).

"Calendar Year Multiplier" shall be equal to:

1	for Additional Compensation paid to the Employee in calendar year 2003;
2	for Additional Compensation paid to the Employee in calendar year 2004;
3	for Additional Compensation paid to the Employee in calendar year 2005;
4	for Additional Compensation paid to the Employee in calendar year 2006;
4	for Additional Compensation paid to the Employee in calendar year 2007;
4	for Additional Compensation paid to the Employee in calendar year 2008;
4	for Additional Compensation paid to the Employee in calendar year 2009;
4	for Additional Compensation paid to the Employee in calendar year 2010.

3. The Employee is hereby awarded the following Percentages for asset sales of the following Eligible Properties:

[**********
****
****
****
****
****
****
****
****
****
****
****
**********]

4. In the event that the Company identifies additional Eligible Properties for similar sale, the terms of other compensation, if any, payable to the Employee shall be determined at such time.

5. All decisions with respect to, or in connection with, the sale of Eligible Properties shall be made solely by authorized officers of the Company, including all transaction terms and conditions (i.e., price, holdbacks, timing, etc.). The Company may limit or abandon any sales or proposed sales of Eligible Properties at any time for any reason or for no reason in its sole discretion. The Company shall have no obligation to take any action with respect to any sales or proposed sales of Eligible Properties.

6. All determinations relating to Eligible Properties, the Additional Compensation payable to the Employee and the amount of Net Sale Proceeds will be made by and administered under the supervision of the Company's Compensation Committee in its sole and absolute discretion, and all determinations of the Company's Compensation Committee will be final and binding on the Employee and the Company.

7. The maximum cash amount that may be paid to Employee as Additional Compensation shall not exceed $200,000 per calendar year through and including 2007 (the "Initial Annual Cap") and $266,667 per calendar year from 2008 through and including 2010 (the "Secondary Annual Cap"); provided however, that any Additional Compensation that has been earned but not paid as a result of the Initial Annual Cap shall be deferred and payable within the first ninety (90) days of the following calendar year, subject again to the Initial Annual Cap, and if necessary, to successive calendar years, subject to the Initial Annual Cap and the Aggregate Cap. The Company shall not pay any interest on any amounts of Additional Compensation that are deferred or payable in future calendar years. If there is any earned but unpaid Additional Compensation as of December 31, 2006, such amount shall be forfeited unless the Employee provides consulting services to the Company after the Term of Employment, in which case, the Company shall pay any earned but unpaid Additional Compensation subject to the Secondary Annual Cap and the Aggregate Cap for three additional calendar years beginning in 2008, subject to the Employee providing the required consulting services

described below, provided, however, that any Eligible Properties set forth in paragraph 3 above that are subject to executed sale contracts as of December 31, 2006 for which the Company receives Net Sale Proceeds in calendar year 2007 shall be treated as if such sales occurred in 2006, and any Additional Compensation payable to the Employee as a result of such sales shall be payable in calendar year 2007 if and only if the Employee has not already been paid Additional Compensation in an amount equal to the Initial Annual Cap in 2006, and then only in an amount up to the Initial Annual Cap. To eliminate any ambiguity, it is understood and agreed that (X) no Additional Compensation shall be paid in 2007 unless (i) the Employee has not been paid Additional Compensation in an amount equal to $200,000 in calendar year 2006 and (ii) Eligible Properties set forth in paragraph 3 are subject to executed sales contracts as of December 31, 2006 and the Company receives Net Sales Proceeds from such sales in calendar year 2007 and (Y) the maximum aggregate amount of Additional Compensation payable in calendar years 2006 and 2007 is $200,000. In each year, such payments shall be made within the first ninety (90) days of the calendar year following the Employee's completion of one year of consulting services. If there is any earned but unpaid Additional Compensation as of March 31, 2010, such amount shall be forfeited, provided that any Additional Compensation resulting from sales of Eligible Properties which provided for deferred payments to the Company shall be payable to the Employee upon receipt of such deferred payments by the Company, subject to the Secondary Annual Cap and the Aggregate Cap. The Employee shall provide consulting services relating to all Company matters in which the Employee was involved prior to the expiration of the Term of Employment and such other matters relating to Company activities as may be reasonably requested from time to time by the Company. During the consulting period, the Employee shall be an independent contractor and shall not be an employee or agent of the Avatar Entities. The Employee shall provide consulting services in calendar years 2007-2009 for the required amount of days and for the consulting fee set forth on the following table in order to receive any Additional Compensation in the calendar year following the Employee's completion of such consulting services:

Calendar Year	Required Consulting Services	Consulting Fee
2007	6 days per month; 72 days per annum	$83,333 per annum payable quarterly
2008	5 days per month; 60 days per annum	$83,333 per annum payable quarterly
2009	4 days per month; 48 days per annum	$83,333 per annum payable quarterly

If the Employee does not provide the required consulting services for the applicable calendar year, the Company shall not be obligated to pay the Employee any Additional Compensations or the consulting fees with respect thereto.

8. If the Employee's employment is terminated by reason of his death or Disability, the Company shall pay to the Employee, the Employee's designated beneficiary or to the Employee's estate the amount of earned but unpaid Additional Compensation as of the date of the Employee's death or Disability, as would otherwise be payable pursuant to this Annex as though the Employee's employment had not been terminated, within ninety (90) days of Employee's death or Disability or seven days after such later date as an executor or administrator of the decedent's estate shall be appointed, provided that any Additional Compensation resulting from sales of Eligible Properties which provided for deferred payments to the Company shall be payable to the Employee upon receipt of such deferred payments by the Company. In addition, the Employee shall be entitled to receive the Additional Compensation for any Eligible Properties set forth in paragraph 3 above that are subject to executed sale contracts at the time of termination of the Employee's employment by reason of the Employee's death or Disability, provided that the Employee was actively engaged in such sale at the time his employment is terminated. Payment of the Additional Compensation for such sales shall be made within ninety (90) days of the closing of such sales. Notwithstanding anything to the contrary contained herein, in no event shall the Employee be entitled to receive Additional Compensation in excess of the amount as would otherwise be payable pursuant to this Annex if the Employee's employment had not been terminated.

9. If Employee's employment is terminated by the Company without Cause, the Employee shall be entitled to receive the amount of earned but unpaid Additional Compensation through the Date of Termination as would otherwise be payable pursuant to this Annex as though the Employee's employment had not been terminated. In addition, Employee shall be entitled to receive the Additional Compensation for any Eligible Properties set forth in paragraph 3 above that are subject to executed sale contracts at the time of termination of Employee's employment by the Company without Cause, provided that the Employee was actively engaged in such sale at the time of his termination. Notwithstanding anything to the contrary contained herein, in no event shall the Employee be entitled to receive Additional Compensation in excess of the amount as would otherwise be payable pursuant to this Annex if the Employee's employment had not been terminated.

10. If the Employee's employment is terminated by the Company with Cause or by the Employee, the Employee shall forfeit any and all Additional Compensation, including such Additional Compensation that has been earned but not paid to the Employee, and shall cease to have any right to any future Additional Compensation.

Exhibit 10.2

RESTRICTED STOCK UNIT AGREEMENT

This RESTRICTED STOCK UNIT AGREEMENT ("AGREEMENT"), dated September 11, 2003, between Avatar Holdings Inc., a Delaware corporation (the "COMPANY") and Dennis Getman (the "PARTICIPANT").

1. AWARD. Pursuant to the provisions of the Amended and Restated 1997 Incentive and Capital Accumulation Plan, as the same may be amended, modified and supplemented (the "PLAN"), the Compensation Committee (the "COMMITTEE") of the Board of Directors of the Company (the "BOARD") hereby awards to the Participant, on the date hereof, subject to the terms and conditions of the Plan and subject further to the terms and conditions herein set forth, an opportunity to receive 15,504 Restricted Stock Units ("UNITS"). Capitalized terms used but not defined herein shall have the meanings assigned to them in the Plan.

2. TERMS AND CONDITIONS. The award evidenced by this Agreement is subject to the following terms and conditions:

(a) The Participant is hereby granted 15,504 Units on the date hereof.

(b) The Participant shall not possess any incidents of ownership (including, without limitation, dividend and voting rights) in shares of Common Stock in respect of the Units until such Units have vested and been distributed to the Participant in the form of shares of Common Stock in accordance with Sections 3 and 4 hereof.

(c) Except as provided in this Section 2(c), the Units and any interest of the Participant therein may not be sold, assigned, transferred, pledged, hypothecated or otherwise disposed of. Any attempt to transfer Units in contravention of this Section 2(c) is void AB INITIO. Units shall not be subject to execution, attachment or other process. Notwithstanding the foregoing, with the prior written consent of the Committee, the Participant shall be permitted to transfer such Units to members of his immediate family (I.E., children, grandchildren or spouse), trusts for the benefit of such family members, and partnerships whose only partners are such family members; PROVIDED, HOWEVER, that no consideration can be paid for the transfer of the Units and the transferee of the Units shall be subject to all conditions applicable to the Units (including all of the terms and conditions of this Agreement) prior to transfer.

3. VESTING AND CONVERSION OF UNITS. On January 2, 2007, the Units granted to the Participant pursuant to Section 2(a) hereof, shall vest in full and such vested Units shall be converted into an equivalent number of shares of Common Stock that will be promptly distributed to the Participant; PROVIDED, HOWEVER, that subject to the provisions of Section 4 hereof, no Units shall vest or be converted and distributed to the Participant unless the Participant is an employee of the Company on December 31, 2006.

Upon the distribution of the shares of Common Stock in respect of the Units, the Company shall issue to the Participant or the Participant's personal representative a stock certificate representing such shares of Common Stock, free of any restrictions, but subject to Section 8 hereof.

4. TERMINATION OF EMPLOYMENT; CHANGE IN THE COMMON STOCK.

(a) TERMINATION OF EMPLOYMENT.

(i) If the Participant's employment with the Company is terminated by the Company for "cause" (as defined below) or by the Participant, the Participant shall forfeit all Units granted to the Participant pursuant to Section 2(a) hereof.

(ii) If the Participant's employment with the Company is terminated by the Company other than for "cause", all Units granted to the Participant pursuant to Section 2(a) hereof, if any, shall vest, be converted into shares of Common Stock and be promptly distributed to the Participant.

(iii) If the Participant dies or in the event the Participant's employment with the Company is terminated by the Company by reason of the Participant's "disability" (as defined below), 7,752 Units granted to the Participant pursuant to Section 2(a) hereof, shall vest, be converted into shares of Common Stock and be promptly distributed to the Participant and the remainder of the Units shall be forfeited.

For purposes of this Section 4(a), the terms "CAUSE" and "DISABILITY", shall have the meanings ascribed to such terms in the Participant's employment agreement with the Company, dated September 11, 2003, as amended or restated from time to time.

(b) CHANGE IN COMMON STOCK. In the event of any change in the Common Stock (through merger, consolidation, reorganization, exchange of shares, or other similar transaction which results in a change in the capital structure of the Company), an adjustment shall be made to each outstanding Unit such that each such Unit shall thereafter vest in accordance with Section 3 for such securities, cash and/or other property as would have been received in respect of the Common Stock subject to such Unit had such Unit vested in full immediately prior to such change, and such an adjustment shall be made successively each time any such change shall occur.

5. DEFERRAL. The Participant may elect to defer the receipt of Common Stock upon the vesting of the Units granted to the Participant pursuant to
Section 2(a) hereof and for the Company to continue to maintain such Units on its books of account if the Participant delivers to the Company a written notice of such election at least six months prior to such vesting and enters into a deferral agreement with the Company on terms satisfactory to the Committee.

6. EQUITABLE ADJUSTMENT. If there shall be any change in the Common Stock of the Company, through recapitalization, stock dividend, stock split, reverse stock split, split up, spinoff, combination of shares, dividend in kind or other like change in capital structure or distribution (other than normal cash dividends) to stockholders of the Company, in order to prevent dilution or enlargement of the Participant's rights under this Agreement and the Plan, the Committee may, in an equitable manner, adjust the number and kind of shares that may be issued under this Agreement and make any other appropriate adjustments in the terms of the Units and this Agreement to reflect such changes or distributions.

7. TAXES. Any distribution of Common Stock pursuant to this Agreement shall be net of any amounts required to be withheld pursuant to applicable federal, state and local tax withholding requirements. In connection with any such distribution, the Company may require the Participant to remit to it an amount sufficient to satisfy such tax withholding requirements prior to the delivery of any certificates for such Common Stock. In lieu thereof, the Company shall have the right to withhold the amount of such taxes from any other sums due or to become due from the Company to the Participant as the Committee shall prescribe. The Committee may, in its discretion and subject to such rules as it may adopt (including any as may be required to satisfy applicable tax and/or non-tax regulatory requirements), permit the Participant to pay all or a portion of the federal, state and local withholding taxes arising in connection with the Units granted hereunder and any distribution of shares of Common Stock in respect thereof by electing to have the Company withhold shares of Common Stock having a Fair Market Value equal to the amount of tax to be withheld, such tax calculated at rates prescribed by statute or regulation.

8. REGULATORY COMPLIANCE AND LISTING. The issuance or delivery of any stock certificates representing shares of Common Stock issuable pursuant to this Agreement may be postponed by the Committee for such period as may be required to comply with any applicable requirements under the federal or state securities laws, any applicable listing requirements of any national securities exchange or the NASDAQ National Market System, and any applicable requirements under any other law, rule or regulation applicable to the issuance or delivery of such shares, and the Company shall not be obligated to deliver any such shares of Common Stock to the Participant if either delivery thereof would constitute a violation of any provision of any law or of any regulation of any governmental authority, any national securities exchange or the NASDAQ National Market System, or the Participant shall not yet have complied fully with the provisions of Section 7 hereof.

9. INVESTMENT REPRESENTATIONS AND RELATED MATTERS. The Participant hereby represents that the Common Stock issuable pursuant to this Agreement is being acquired for investment and not for sale or with a view to distribution thereof. The Participant acknowledges and agrees that any sale or distribution of shares of Common Stock issued pursuant to this Agreement may be made only pursuant to either (a) a registration statement on an appropriate form under the Securities Act of 1933, as amended (the "SECURITIES ACT"), which registration statement has become effective and is current with regard to the shares being

sold, or (b) a specific exemption from the registration requirements of the Securities Act that is confirmed in a favorable written opinion of counsel, in form and substance satisfactory to counsel for the Company, prior to any such sale or distribution. The Participant hereby consents to such action as the Committee or the Company deems necessary or appropriate from time to time to prevent a violation of, or to perfect an exemption from, the registration requirements of the Securities Act or to implement the provisions of this Agreement, including but not limited to placing restrictive legends on certificates evidencing shares of Common Stock issued pursuant to this Agreement and delivering stop transfer instructions to the Company's stock transfer agent.

10. NO RIGHT TO CONTINUED EMPLOYMENT. This Agreement does not confer upon the Participant any right to continued employment by the Company or any of its subsidiaries or affiliated companies, nor shall it interfere in any way with the right of the Participant's employer to terminate the Participant's employment at any time for any reason or no reason.

11. CONSTRUCTION. The Plan and this Agreement will be construed by and administered under the supervision of the Committee, and all determinations of the Committee will be final and binding on the Participant and the Company.

12. NOTICES. Any notice required or permitted under this Agreement shall be deemed given when delivered personally, or when deposited in a United States Post Office, postage prepaid, addressed, as appropriate, (i) to the Participant at the last address specified in Participant's employment records, or such other address as the Participant may designate in writing to the Company, or (ii) to the Company, Avatar Holdings Inc., 201 Alhambra Circle, 12th Floor, Coral Gables, Florida 33134 Attention: Chairman of the Board, or such other address as the Company may designate in writing to the Participant.

13. FAILURE TO ENFORCE NOT A WAIVER. The failure of either party hereto to enforce at any time any provision of this Agreement shall in no way be construed to be a waiver of such provision or of any other provision hereof.

14. GOVERNING LAW. This Agreement shall be governed by and construed according to the laws of the State of Delaware, without regard to the conflicts of laws provisions thereof.

15. INCORPORATION OF PLAN. The Plan is hereby incorporated by reference and made a part of this Agreement, and this Agreement shall be subject to the terms of the Plan, as the Plan may be amended from time to time.

16. COUNTERPARTS. This Agreement may be executed in two or more counterparts, each of which shall be an original but all of which together shall represent one and the same agreement.

17. MISCELLANEOUS. This Agreement cannot be changed or terminated orally. This Agreement and the Plan contain the entire agreement between the parties relating to the subject matter hereof. The section headings herein are intended for reference only and shall not affect the interpretation hereof.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first written above.

AVATAR HOLDINGS INC.

By: /s/ GERALD D. KELFER

Name: Gerald D. Kelfer
Title: Chief Executive Officer

/s/ DENNIS J. GETMAN

Dennis Getman

Exhibit 31.1

CERTIFICATION PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Gerald D. Kelfer, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Avatar Holdings Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15 (e) and 15d-15 (e)) for the registrant and have:

a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

c) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):

a) all significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 10, 2003

/s/ Gerald D. Kelfer

Gerald D. Kelfer
President and Chief Executive Officer

Exhibit 31.2

CERTIFICATION PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Charles L. McNairy, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Avatar Holdings Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15 (e) and 15d-15 (e)) for the registrant and have:

a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

c) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):

a) all significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 10, 2003

/s/ Charles L. McNairy

Charles L. McNairy
Executive Vice President, Treasurer and Chief Financial Officer

Exhibit 32.1

Certification Required by 18 U.S.C. Section 1350
(as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002)

I, Gerald D. Kelfer, as President and Chief Executive Officer of Avatar Holdings Inc. (the "Company"), certify, pursuant to 18 U.S.C. Section 1350 (as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002), that to my knowledge:

(1) the accompanying Report on Form 10-Q of the Company for the quarter ended September 30, 2003 (the "Report"), filed with the U.S. Securities and Exchange Commission, fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

(2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: November 10, 2003

/s/ Gerald D. Kelfer

Gerald D. Kelfer
President and Chief Executive Officer

Exhibit 32.2

Certification Required by 18 U.S.C. Section 1350
(as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002)

I, Charles L. McNairy, as Executive Vice President, Treasurer and Chief Financial Officer of Avatar Holdings Inc. (the "Company"), certify, pursuant to 18 U.S.C. Section 1350 (as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002), that to my knowledge:

(1) the accompanying Report on Form 10-Q of the Company for the quarter ended September 30, 2003 (the "Report"), filed with the U.S. Securities and Exchange Commission, fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

(2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: November 10, 2003

/s/ Charles L. McNairy

Charles L. McNairy
Executive Vice President, Treasurer and Chief Financial Officer

End of Filing

Powered By EDGAR Online

© 2005 | EDGAR Online, Inc.