

may file liens for unpaid Club Dues against Homes, may enforce the Club TerraLargo Rules and Regulations, and prepare the Budget for the Club.

11. Paramount Right of Association. Association shall have the right to post all notices of its Board and member meetings and all notices required by the Florida Statutes at a designated location within the Club Facilities visible to all Members without charge.

12. Attorneys' Fees. If at any time Club Owner must enforce any provision hereof, Club Owner shall be entitled to recover all of its reasonable costs and attorneys' and paraprofessional fees pre-trial and at all levels of proceedings, including appeals, collections and bankruptcy.

13. Rights to Pay and Receive Reimbursement. Club Owner and/or Association shall have the right, but not the obligation to pay any Club Dues, or Special Use Fees which are in default and which may or have become a lien or charge against any Home. If so paid, the party paying the same shall be subrogated to the enforcement rights with regard to the amounts due. Further, Club Owner and/or Association shall have the right, but not the obligation, to loan funds and pay insurance premiums, taxes or other items of costs on behalf of an Owner to protect its lien. The party advancing such funds shall be entitled to immediate reimbursement, on demand, from the Owner for such amounts so paid, plus interest thereon at the maximum rate allowable by law, plus any costs of collection including, but not limited to, reasonable attorneys' and paraprofessional fees, pre-trial and at all levels of proceedings including appeals.

14. General Restrictions. Club Owner has adopted the following general restrictions governing the use of the Club. Each Member, Immediate Family Member and other person entitled to use the Club shall comply with following general restrictions:

14.1 Minors. Minors sixteen (16) years and older are permitted to use the Club Facilities (other than the fitness center) without adult supervision, unless otherwise provided in the Club TerraLargo Rules and Regulations. Minors sixteen (16) years of age and older may use the fitness center either with adult supervision or without adult supervision if such minor's parent or legal guardian releases Club Owner from liability for such use pursuant to consent form(s) provided by Club Owner from time to time; provided, however, parents are responsible for the actions and safety of such minors and any damages to the equipment in the fitness center caused by such minors. Minors under sixteen (16) years of age are not permitted to use the fitness center. Minors under sixteen (16) years of age are not permitted to use the pools without adult supervision. Parents are responsible for the actions and safety of such minors and any damage to the pools caused by such minors. Notwithstanding the foregoing, if minors use the Club Facilities without the proper execution of a consent form or without adult supervision, Club Owner is not liable for the actions of such minors.

14.2 Responsibility for Personal Property and Persons. Each Member assumes sole responsibility for the health, safety and welfare of such Member, his or her Immediate Family Members and guests, and the personal property of all of the foregoing, and each Member shall not allow any of the foregoing to damage the Club or interfere with the rights of other Members hereunder.

14.3 Cars and Personal Property. The Club is not responsible for any loss or damage to any private property used, placed or stored on the Club Facilities. Without limiting the foregoing, any person parking a car within the Parking Areas assumes all risk of loss with respect to his or her car in the Parking Areas. Further, any person entering the Club Facilities assumes all risk of loss with respect to his or her equipment, jewelry or other possessions stored in the fitness center lockers, on bicycles, or within cars and wallets, books and clothing left in the pool area.

14.4 Activities. Any Member, Immediate Family Member, guest or other person who, in any manner, makes use of, or accepts the use of, any apparatus, appliance, facility, privilege or service whatsoever owned, leased or operated by the Club, or who engages in any contest, game, function, exercise, competition or other activity operated, organized, arranged or sponsored by the Club, either on or off the Club Facilities, shall do so at their own risk. Every Member shall be liable for any property damage and/or personal injury at the Club, or at any activity or function operated, organized, arranged or sponsored by the Club, caused by any Member, Immediate Family Member or guest. No Member may use the Club Facilities for any club,



society, party, religious, political, charitable, fraternal, civil, fund-raising or other purposes without the prior written consent of Club Owner, which consent may be withheld for any reason.

14.5 Property Belonging to the Club. Property or furniture belonging to the Club shall not be removed from the room in which it is placed or from the Club Facilities.

14.6 Indemnification of Club Owner. In addition, each Member, Immediate Family Member and guest agrees to indemnify and hold harmless Club Owner and Club Manager, their officers, members, shareholders, partners, agents, employees, affiliates, directors and attorneys (collectively, "Indemnified Parties") against all actions, injury, claims, loss, liability, damages, costs and expenses of any kind or nature whatsoever ("Losses") incurred by or asserted against any of the Indemnified Parties from and after the date hereof, whether direct, indirect, or consequential, as a result of or in any way related to such Member's membership, including, without limitation, use of the Club Facilities by Members, Immediate Family Members and their guests, or the interpretation of this Club Plan, and/or the Club TerraLargo Rules and Regulations and/or from any act or omission of the Club or of any of the Indemnified Parties. Losses shall include the deductible payable under any of the Club's insurance policies.

14.7 Attorneys' Fees. Should any Member or Immediate Family Member bring suit against Club Owner or Club Manager or any of the Indemnified Parties for any claim or matter and fail to obtain judgment therein against such Indemnified Parties, the Member and/or Immediate Family Member shall be liable to such parties for all Losses, costs and expenses incurred by the Indemnified Parties in the defense of such suit, including attorneys' fees and paraprofessional fees, pre-trial and at all levels of proceedings, including appeals.

14.8 Unrecorded Rules. Club Owner may adopt rules and regulations ("Club TerraLargo Rules and Regulations") from time to time. Such Club TerraLargo Rules and Regulations may not be recorded; therefore, each Owner and Lessee should request a copy of unrecorded Club TerraLargo Rules and Regulations from the Club and become familiar with the same. Such Club TerraLargo Rules and Regulations are in addition to the general restrictions set forth in this Section.

14.9 Waiver of Club TerraLargo Rules and Regulations. Club Owner may waive the application of any Club TerraLargo Rules and Regulations to one or more Owners, Lessees, guests, invitees, employees or agents in Club Owner's sole and absolute discretion. A waiver may be revoked at any time upon notice to affected Lessees and Owners.

15. Violation of the Club TerraLargo Rules and Regulations.

15.1 Basis For Suspension. The membership rights of a Member may be suspended by Club Owner if, in the sole judgment of Club Owner:

15.1.1 such person is not an Owner or a Lessee;

15.1.2 the Member violates one or more of the Club TerraLargo Rules and Regulations;

15.1.3 the Member verbally abuses and/or disrespects employees and/or management of the Club;

15.1.4 an Immediate Family, a guest or other person for whom a Member is responsible violates one or more of the Club TerraLargo Rules and Regulations;

15.1.5 an Owner fails to pay Club Dues in a proper and timely manner; or

15.1.6 a Member and/or guest has injured, harmed or threatened to injure or harm any person within the Club Facilities, or harmed, destroyed or stolen any personal property within the Club Facilities, whether belonging to a third party or to Club Owner.

15.2 Types of Suspension. Club Owner may restrict or suspend, for cause or causes described in the preceding Section, any Member's privileges to use any or all of the Club Facilities. By way of example, and not as a limitation, Club Owner may suspend the membership of a Lessee if such Lessee's Owner fails to pay Club Dues due in connection with a leased Home. In addition, Club Manager may suspend some membership rights while allowing a



Member to continue to exercise other membership rights. For example, Club Manager may suspend the rights of a particular Member (and/or Immediate Family Member) or Club Manager may prohibit a Member (and/or Immediate Family Member) from using a portion of the Club Facilities. No Member whose membership privileges have been fully or partially suspended shall, on account of any such restriction or suspension, be entitled to any refund or abatement of Club Dues or any other fees. During the restriction or suspension, Club Dues shall continue to accrue and be payable each month. Under no circumstance will a Member be reinstated until all Club Dues and other amounts due to the Club are paid in full.

16. Destruction. In the event of the damage by partial or total destruction by fire, windstorm, or any other casualty for which insurance shall be payable, any insurance proceeds shall be paid to Club Owner. If Club Owner elects, in Club Owner's sole and absolute discretion, to reconstruct the Club Facilities, the insurance proceeds shall be available for the purpose of reconstruction or repair of the Club; provided, however, Club Owner shall have the right to change the design or facilities comprising the Club in its sole and absolute discretion. There shall be no abatement in payments of Club Dues, including the Club Membership Fee, during casualty or reconstruction, unless otherwise provided by Club Owner. The reconstruction or repair, when completed, shall, to the extent legally possible, restore the Club Facilities substantially to the condition in which they existed before the damage or destruction took place. After all reconstruction or repairs have been made, if there are any excess insurance proceeds, then and in that event, the excess shall be the sole property of Club Owner. If Club Owner elects not to reconstruct the Club Facilities, Club Owner shall terminate this Club Plan and the provisions of the Declaration relating to the Club by document recorded in the Public Records.

17. Risk of Loss. Club Owner shall not be liable for, and the Members assume all risks that may occur by reason of, any condition or occurrence, including, but not limited to, damage to the Club on account of casualty, water or the bursting or leaking of any pipes or waste water about the Club, or from any act of negligence of any other person, or fire, or hurricane, or other act of God, or from any cause whatsoever, occurring after the date of the recording of this Club Plan. Neither Association nor any Owner shall be entitled to cancel this Club Plan or any abatement in Club Dues on account of any such occurrence. By way of example, if the Club is destroyed in whole or part by a casualty, Owners shall remain liable to pay all Club Dues notwithstanding that the Club is not available for use.

18. Eminent Domain. If, during the operation of this Club Plan, an eminent domain proceeding is commenced affecting the Club, then in that event, the following conditions shall apply:

18.1 Complete Taking. If the whole or any material part of the Club is taken under the power of eminent domain, Club Owner may terminate this Club Plan and the provisions of the Declaration relating to the Club by written notice given to Association, which notice shall be recorded in the Public Records. Should such notice be given, this Club Plan and the provisions in the Declaration relating to the Club shall terminate. All damages awarded in relation to the taking shall be the sole property of Club Owner.

18.2 Partial Taking. Should a portion of the Club be taken in an eminent domain proceeding which requires the partial demolition of any of the improvements located on the Club so that Club Owner determines the taking is not a complete taking, then, in such event, Club Owner shall have the option, to the extent legally possible, to utilize a portion of the proceeds of such taking for the restoration, repair, or remodeling of the remaining improvements to the Club, or to terminate this Club Plan as provided in Section 18.1 hereof. All damages awarded in relation to the taking shall be the sole property of Club Owner, and Club Owner shall determine what portion of such damages, if any, shall be applied to restoration, repair, or remodeling.

19. Additional Indemnification of Club Owner. Association and each Owner covenant and agree jointly and severally to indemnify, defend and hold harmless Developer and Club Owner, their respective officers, members partners, directors, shareholders, agents and any related persons or corporations and their employees, attorneys, agents, officers and directors from and against any and all claims, suits, actions, causes of action or damages arising from any personal injury, loss of life, or damage to property, sustained on or about the Common Areas, Club Property, or other property serving Association, and improvements thereon, or resulting from or arising out of activities or operations of Association or Owners, and from and against all costs, expenses, court costs, counsel fees, paraprofessional fees (including, but not limited to, all pre-

trial, trial and appellate levels and whether or not suit be instituted), expenses and liabilities incurred or arising from any such claim, the investigation thereof, or the defense of any action or proceedings brought thereon, and from and against any orders, judgments or decrees which may be entered relating thereto. The indemnifications provided in this Section shall survive termination of this Club Plan. The costs and expense of fulfilling this covenant of indemnification shall be Operating Costs of Association to the extent such matters are not covered by insurance maintained by Association.

20. Estoppel. Association shall, from time to time, upon not less than ten (10) days' prior written notice from Club Owner, execute, acknowledge and deliver a written statement: (a) certifying that this Club Plan is unmodified and in full force and effect (or, if modified, stating the nature of such modification, listing the instruments of modification, and certifying that this Club Plan, as so modified, is in full force and effect) and the date to which the Club Dues are paid; and (b) acknowledging that there are not, to Association's knowledge, any uncured defaults by Association, Club Owner or Members with respect to this Club Plan. Any such statement may be conclusively relied upon by any prospective purchaser of Club Owner's interest or mortgagee of Club Owner's interest or assignee of any mortgage upon Club Owner's interest in the Club. Association's failure to deliver such statement within such time shall be conclusive evidence: (1) that this Club Plan is in full force and effect, without modification except as may be represented, in good faith, by Club Owner; and (2) that there are no uncured defaults; and (3) that the Club Dues have been paid as stated by Club Owner.

21. No Waiver. The failure of Club Owner in one or more instances to insist upon strict performance or observance of one or more provisions of the Club Plan or conditions hereof or to exercise any remedy, privilege or option herein conferred upon or reserved to Club Owner, shall not operate or be construed as a relinquishment or waiver of such covenant or condition or of the right to enforce the same or to exercise such privilege, option or remedy, but the same shall continue in full force and effect. The receipt by Club Owner of any payment required to be made by any Owner, or any part thereof, shall not be a waiver of any other payment then due, nor shall such receipt, though with knowledge of the breach of any covenant or condition hereof, operate as, or be deemed to be a waiver of such breach. No waiver of Club Owner (with respect to Association or a Member) shall be effective unless made by Club Owner in writing.

22. Franchises and Concessions. Club Owner may grant franchises or concessions to commercial concerns on all or part of the Club and shall be entitled to all income derived therefrom.

23. Resolution of Disputes. ASSOCIATION AND, BY ACCEPTANCE OF A DEED, EACH OWNER AND BUILDER, AGREE THAT THIS CLUB PLAN IS A VERY COMPLEX DOCUMENT. ACCORDINGLY, ASSOCIATION AND EACH OWNER AND BUILDER AGREE THAT JUSTICE WILL BEST BE SERVED IF ALL DISPUTES RESPECTING THIS CLUB PLAN ARE HEARD BY A JUDGE, AND NOT A JURY. ANY CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION, WITH RESPECT TO ANY ACTION, PROCEEDING, CLAIM, COUNTERCLAIM, OR CROSS CLAIM, WHETHER IN CONTRACT AND/OR IN TORT (REGARDLESS IF THE TORT ACTION IS PRESENTLY RECOGNIZED OR NOT), INCLUDING, BUT NOT LIMITED TO, PERSONAL INJURIES, PAIN, SUFFERING AND WRONGFUL DEATH, BASED ON, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY RELATED TO THIS CLUB PLAN, INCLUDING ANY COURSE OF CONDUCT, COURSE OF DEALING, VERBAL OR WRITTEN STATEMENT, VALIDATION, PROTECTION, ENFORCEMENT ACTION OR OMISSION OF ANY PARTY, SHALL BE HEARD IN A COURT PROCEEDING BY A JUDGE, AND NOT A JURY. CLUB OWNER HEREBY SUGGESTS THAT EACH OWNER UNDERSTAND THE LEGAL CONSEQUENCES OF ACCEPTING A DEED TO A HOME.

24. Venue. EACH OWNER ACKNOWLEDGES REGARDLESS OF WHERE SUCH OWNER (i) EXECUTED A PURCHASE AND SALE AGREEMENT, (ii) RESIDES, (iii) OBTAINS FINANCING OR (iv) CLOSED ON A HOME, THIS CLUB PLAN LEGALLY AND FACTUALLY WAS EXECUTED IN POLK COUNTY, FLORIDA. CLUB OWNER HAS AN OFFICE IN POLK COUNTY, FLORIDA AND EACH HOME IS LOCATED IN POLK COUNTY, FLORIDA. ACCORDINGLY, AN IRREFUTABLE PRESUMPTION EXISTS THAT THE ONLY APPROPRIATE VENUE FOR THE RESOLUTION OF ANY DISPUTE LIES IN POLK COUNTY, FLORIDA. IN ADDITION TO THE



FOREGOING, EACH OWNER, BUILDER AND CLUB OWNER AGREE THAT THE VENUE FOR RESOLUTION OF ANY DISPUTE LIES IN POLK COUNTY, FLORIDA.

25. Release. BEFORE ACCEPTING A DEED TO A HOME, EACH OWNER HAS AN OBLIGATION TO RETAIN AN ATTORNEY IN ORDER TO CONFIRM THE VALIDITY OF THIS CLUB PLAN. BY ACCEPTANCE OF A DEED TO A HOME, EACH OWNER ACKNOWLEDGES THAT HE HAS SOUGHT (OR HAD THE OPTION TO SEEK) AND RECEIVED (OR DECLINED TO OBTAIN) SUCH AN OPINION OR HAS MADE AN AFFIRMATIVE DECISION NOT TO SEEK SUCH AN OPINION. CLUB OWNER IS RELYING ON EACH OWNER CONFIRMING IN ADVANCE OF ACQUIRING A HOME THAT THIS CLUB PLAN IS VALID, FAIR AND ENFORCEABLE. SUCH RELIANCE IS DETRIMENTAL TO CLUB OWNER. ACCORDINGLY, AN ESTOPPEL AND WAIVER EXISTS PROHIBITING EACH OWNER FROM TAKING THE POSITION THAT ANY PROVISION OF THIS CLUB PLAN IS INVALID IN ANY RESPECT. AS A FURTHER MATERIAL INDUCEMENT FOR CLUB OWNER TO SUBJECT THE CLUB PROPERTY TO THIS CLUB PLAN, EACH OWNER DOES HEREBY RELEASE, WAIVE, DISCHARGE, COVENANT NOT TO SUE, ACQUIT, SATISFY AND FOREVER DISCHARGE CLUB OWNER, ITS OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS AND ITS AFFILIATES AND ASSIGNS FROM ANY AND ALL LIABILITY, CLAIMS, COUNTERCLAIMS, DEFENSES, ACTIONS, CAUSES OF ACTION, SUITS, CONTROVERSIES, AGREEMENTS, PROMISES AND DEMANDS WHATSOEVER IN LAW OR IN EQUITY WHICH AN OWNER MAY HAVE IN THE FUTURE, OR WHICH ANY PERSONAL REPRESENTATIVE, SUCCESSOR, HEIR OR ASSIGN OF OWNER HEREAFTER CAN, SHALL OR MAY HAVE AGAINST CLUB OWNER, ITS OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS, AND ITS AFFILIATES AND ASSIGNS, FOR, UPON OR BY REASON OF ANY MATTER, CAUSE OR THING WHATSOEVER RESPECTING THIS CLUB PLAN, OR THE EXHIBITS HERETO. THIS RELEASE AND WAIVER IS INTENDED TO BE AS BROAD AND INCLUSIVE AS PERMITTED BY THE LAWS OF THE STATE OF FLORIDA.

26. Amendment. Notwithstanding any other provision herein to the contrary, no amendment to this Club Plan shall affect the rights of Developer or Club Owner unless such amendment receives the prior written consent of Developer or Club Owner, as applicable, which may be withheld for any reason whatsoever. No amendment shall alter the provisions of this Club Plan benefiting Lenders without the prior approval of the Lender(s) enjoying the benefit of such provisions. No amendment shall be effective until it is recorded in the Public Records. Club Owner shall have the right to amend this Club Plan as it deems appropriate, without the joinder or consent of any person or entity whatsoever. Club Owner's right to amend under this provision is to be construed as broadly as possible. By way of example, Club Owner may terminate this Club Plan (and all rights and obligations hereunder) in the event of partial or full destruction of the Club. Further, Club Owner may elect, in Club Owner's sole and absolute discretion, to subject property outside of TerraLargo to this Club Plan by amendment recorded in the Public Records. Likewise, Club Owner may elect, in Club Owner's sole and absolute discretion, to remove portions of TerraLargo from the benefit and encumbrance of this Club Plan by amendment recorded in the Public Records. Each Owner agrees that he, she or it has no vested rights under current case law or otherwise with respect to any provision in this Club Plan other than those setting forth the maximum level of each individual Home's Club Membership Fee that shall be imposed from time to time.

27. Severability. Invalidation of any of the provisions of this Club Plan by judgment or court order shall in no way affect any other provision, and the remainder of this Club Plan shall remain in full force and effect.

28. Notices. Any notice required to be sent to any person, firm, or entity under the provisions of this Club Plan shall be deemed to have been properly sent when mailed, postpaid, hand delivered, telefaxed, or delivered by professional carrier or overnight delivery to the last known address at the time of such mailing.

29. Florida Statutes. Whenever this Club Plan refers to the Florida Statutes, the reference shall be deemed to refer to the Florida Statutes as they exist on the date the Club Plan was recorded except to the extent provided otherwise as to any particular provision of the Florida Statutes.

30. Headings. The headings within this Club Plan are for convenience only and shall not be used to limit or interpret the terms hereof.

31. Association to Bear Legal Expenses. In the event that there is any ambiguity or question regarding the provisions of this Club Plan, Club Owner's determination of such matter shall be conclusive and binding. Therefore, and in order to ensure that the Owners and Association abide by Club Owner's determination, in the event that there is any dispute respecting the interpretation of this Club Plan, Association shall bear all legal expenses of both Association and Club Owner including, without limitation, all attorney's fees, paraprofessional fees and costs, pre-trial and at all levels of proceedings, including appeals, regardless of the outcome of such proceedings.

NOW THEREFORE, Avatar has set its signature and seal below this 24<sup>th</sup> day of October, 2007.

WITNESSES:

AVATAR PROPERTIES INC.,  
a Florida corporation

Maribel G. Pila  
Print Name: Maribel G. Pila  
Nora E. Sanchez  
Print Name: NORA E. SANCHEZ

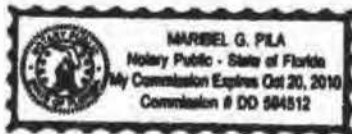
By: Patricia Kimball Fletcher  
Name: Patricia Kimball Fletcher  
Title: Executive Vice President  
Date: Oct. 24, 2007

{SEAL}

STATE OF FLORIDA                    )  
  ) SS.:  
COUNTY OF MIAMI-DADE        )

The foregoing instrument was acknowledged before me this 24<sup>th</sup> day of October, 2007 by Patricia Kimball Fletcher as Executive Vice President of AVATAR PROPERTIES INC., a Florida corporation, who is personally known to me or who has produced N/A as identification.

My commission expires:



Maribel G. Pila  
NOTARY PUBLIC, State of Florida at Large  
Print name: Maribel G. Pila

EXHIBIT A

LEGAL DESCRIPTION  
OF THE INITIAL CLUB PROPERTY

Tract A of the Plat of TERRALARGO, according to the Plat thereof, recorded in Plat Book 139,  
Page 7 of the Public Records of Polk County, Florida.

EXHIBIT B

LEGAL DESCRIPTION OF TERRALARGO

All of TERRALARGO, according to the Plat thereof, recorded in Plat Book 139, Page 7 of the Public Records of Polk County, Florida, and

All of TERRALARGO PHASE II, according to the Plat thereof, recorded in Plat Book 143, Page 3 of the Public Records of Polk County, Florida.



## EXHIBIT C

## GENERAL RELEASE

**KNOW ALL MEN BY THESE PRESENTS:** That TERRALARGO COMMUNITY ASSOCIATION, INC., a not-for-profit corporation (the "Releasor"), for and in consideration of the sum of TEN DOLLARS (\$10.00), and other valuable consideration, received from or on behalf of AVATAR PROPERTIES INC., a Florida corporation (the "Releasee"), the mailing address of which is 201 Alhambra Circle, Suite 1200, Coral Gables, FL 33134, the receipt whereof is hereby acknowledged,

**DOES HEREBY** remise, release, acquit, satisfy, and forever discharge the Releasee, and its officers, directors, shareholders, employees, attorneys, agents, affiliates, affiliates' officers, directors, shareholders, employees, attorneys, agents, members, partners, representatives, and all other related parties who may be jointly liable with them, (collectively, the "Releasee's Affiliates") of and from all, and all manner of, action and actions, cause and causes of action, suits, debts, sums of money, accounts, bills, covenants, controversies, agreements, promises, damages (including consequential, incidental, punitive, special or other), judgments, executions, claims, liabilities and demands, whatsoever, at law and in equity (including, but not limited to, claims founded on tort, contract, contribution, indemnity or any other theory whatsoever), which such Releasor ever had, now has, or which any officer, director, shareholder, representative, successor, or assign of such Releasor, hereafter can, shall or may have, against such Releasee and the Releasee's Affiliates, for, upon or by reason of any matter, cause or thing, whatsoever, from the beginning of the world to the day of these presents, whether known or unknown (either through ignorance, oversight, error, negligence or otherwise), and whether matured or unmatured, and which matter, cause, or thing, relates, in any manner, directly or indirectly, regarding (a) the Releasor, the common areas (the "Common Areas") within TerraLargo (the "Community"), Club TerraLargo (the "Club"), or the improvements thereon, more particularly described on Exhibit A hereto (collectively, the "Property"), or (b) any occurrences, circumstances, and/or documentation (e.g., the Declaration and/or the Club Plan) whatsoever, relating to the Community, Common Areas and/or Property, which occurred or took place prior to the transfer of the Property from Releasee to Releasor (the "Closing"), except (i) representations of Releasee in that certain Agreement for Sale and Purchase of Property dated \_\_\_\_\_, 200\_\_ between Releasor and Releasee which survive the Closing, (ii) warranties of the Releasee contained in that certain Special Warranty Deed delivered by Releasee in connection with such Closing and (iii) personal injury claims respecting the Property occurring prior to Closing.

**IN WITNESS WHEREOF**, we have hereunto set our hands and seals this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

Signed, sealed and delivered  
in the presence of:

TERRALARGO COMMUNITY ASSOCIATION, INC.,  
a Florida not-for-profit corporation

Name: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Name: \_\_\_\_\_

STATE OF FLORIDA )

) SS.:

COUNTY OF )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 200\_\_ by \_\_\_\_\_ as \_\_\_\_\_ of TERRALARGO COMMUNITY ASSOCIATION, INC., a Florida not-for-profit corporation, on behalf of such corporation who [ ] is personally known to me or [ ] has produced \_\_\_\_\_ as identification and did not take an oath.

[NOTARIAL SEAL]

Name: \_\_\_\_\_

Notary Public, State of \_\_\_\_\_

Commission No.: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

## EXHIBIT D

## CLUB MEMBERSHIP FEE SCHEDULE

Year	Monthly Payment
2007	\$75
2008	\$77
2009	\$79
2010	\$81
2011	\$83
2012	\$85
2013	\$87
2014	\$89
2015	\$91
2016	\$93
2017	\$95
2018	\$97
2019	\$99
2020	\$101
2021	\$103
2022	\$105
2023	\$107
2024	\$109
2025	\$111
2026	\$113
2027	\$115
2028	\$117
2029	\$119
2030	\$121
2031	\$123
2032	\$125
2033	\$127
2034	\$129
2035	\$131
2036	\$133

From 2037 and thereafter, Club Membership Fees shall be \$133.00 per month and will not increase.

EXHIBIT E  
OPTION NOTICE

**IRREVOCABLE OPTION NOTICE**

The Board of Directors of TerraLargo Community Association, Inc. (the "**Board**") hereby provides Club Owner (as defined in that certain Club Plan recorded in Official Records Book \_\_\_\_\_ at Page \_\_\_\_\_ of the Public Records of Polk County, Florida) with notice of its intent to purchase the Club (as defined in the Club Plan) pursuant to the terms of the Club Plan. Attached hereto as **Schedule 1** is a resolution executed by the majority of the Board approving this Irrevocable Option Notice.

The undersigned Board has executed this Irrevocable Option Notice on this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Director

\_\_\_\_\_  
Name: \_\_\_\_\_  
Director

\_\_\_\_\_  
Name: \_\_\_\_\_  
Director



Schedule 1

**TERRALARGO COMMUNITY ASSOCIATION, INC.  
(THE "ASSOCIATION")**

**ACTION BY THE BOARD OF DIRECTORS OF THE ASSOCIATION  
WITHOUT A MEETING**

The undersigned, constituting the majority of the Board of Directors of the Association do hereby consent to and approve the following actions:

WHEREAS, the Board of Directors hereby acknowledges and agrees that it is in the best interest of the Association to purchase the Club (as defined in that certain Club Plan recorded in Official Records Book \_\_\_\_ at Page \_\_\_\_ of the Public Records of Polk County, Florida); and

WHEREAS, the Board of Directors hereby agrees to provide Club Owner (as defined in the Club Plan) with the Option Notice (as defined in the Club Plan) in order to evidence its intent to purchase the Club (as defined in the Club Plan) pursuant to the terms of the Club Plan;

NOW THEREFORE, BE IT RESOLVED, that the Board of Directors hereby approves the purchase of the Club and the giving of the Option Notice to Club Owner.

Effective: \_\_\_\_\_

\_\_\_\_\_  
Name:  
Director

\_\_\_\_\_  
Name:  
Director

\_\_\_\_\_  
Name:  
Director

EXHIBIT F  
AGREEMENT FOR SALE AND PURCHASE

AGREEMENT FOR SALE AND PURCHASE OF PROPERTY  
CLUB TERRALARGO

(998-155)

(28863)



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AGREEMENT FOR SALE AND PURCHASE OF PROPERTY  
CLUB TERRALARGO

This Agreement for Sale and Purchase of Property Club TerraLargo (this "Agreement") is among AVATAR PROPERTIES, INC., a Florida corporation ("Seller"), and TERRALARGO COMMUNITY ASSOCIATION, INC., a Florida not-for-profit corporation ("Buyer").

**RECITALS:**

A. Seller is the owner of the fee simple estate in the Land (hereinafter defined) which is comprised of the Club.

B. On \_\_\_\_\_, Seller entered into the Club Plan (hereinafter defined) which governs the use and operation of the Club.

C. Seller has agreed to sell to Buyer and Buyer has agreed to purchase from Seller the Club on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of each party to the other contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby mutually covenant and agree as follows:

1. Recitals. The foregoing Recitals are true and correct and are incorporated into and form a part of this Agreement.

2. Defined Terms. As used herein, the following terms shall have the following meanings:

"Acceptable Encumbrances" shall have the meaning set forth in Section 5.1 hereof.

"Agreement" shall have the meaning set forth in the initial sentence hereof.

"Business Day" means any day on which business is conducted by national banking institutions in the County.

"Closing Date" shall have the meaning as defined in Section 6.1 hereof.

"Closing" shall mean the execution and delivery of the Special Warranty Deed and the other instruments to be executed by Seller conveying the Property to Buyer and the payment by Buyer to Seller of the Purchase Price and execution and delivery by Buyer of all documents to be executed by Buyer at Closing.

"Club" shall have the meaning set forth in the Club Plan.

"Club Dues" shall have the meaning set forth in the Club Plan.

"Club Plan" shall mean the Club TerraLargo Club Plan recorded in Official Records Book \_\_\_\_\_, Page \_\_\_\_\_ of the County, as amended.

"Clubhouse" shall mean that certain Clubhouse and related improvements and fixtures including, without limitation, offices, a health/fitness facility, swimming pool and related facilities, presently located on the Land.

"Clubhouse Land" means that certain real property described on Exhibit A attached hereto and made a part hereof.

"County" shall mean Polk County, Florida, including all of its agencies, divisions, departments, attorneys or agents employed to act on its behalf.

"Due Diligence Reports" shall mean all reports, documents, studies, analyses, and other written information obtained by Buyer with respect to the Property including, without limitation, results of physical inspections, surveys, site plans, feasibility studies, architectural plans, specifications and drawings, title reports, permits, approvals and authorizations (whether

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obtained from governmental authorities or third parties); and all other work product generated by or for Buyer (other than attorney work product) in connection with the Property, if any.

**"Effective Date"** shall mean 5:00 p.m. Eastern time on the date upon which both Buyer and Seller shall have executed this Agreement.

**"Feasibility Date"** shall mean 5:00 p.m. Eastern time on the tenth (10) day following the Effective Date.

**"Foreign Substance"** shall mean any substance which is commonly referred to as foreign or hazardous under local, state or federal law.

**"Improvements"** shall mean all of Seller's right, title and interest in and to any and all buildings, structures or other improvements located on the Land, including, but not limited to the Clubhouse and any other improvements located on the Land. "Improvements" does not include any improvements located on the Land which are not owned by Seller (e.g., equipment and facilities owned by utility companies).

**"Institutional Loan"** shall have the meaning set forth in Section 4.2.1 hereof.

**"Inventory"** shall mean the furniture, fixtures and equipment listed on **Exhibit G** attached hereto and made a part hereof.

**"Land"** shall mean all of Seller's right, title and interest in and to the Clubhouse Land.

**"Lender"** shall have the meaning set forth in Section 4.2.1 hereof.

**"Pending Litigation"** shall mean those litigation matters, including collection matters, if any, listed on **Exhibit H** attached hereto and made a part hereof.

**"Permits"** shall mean all permits, licenses, and other governmental approvals and authorizations affecting the Improvements.

**"Personal Property"** shall mean all Seller's right, title and interest in and to: (i) all Inventory and fixtures (if any not listed as part of the Inventory) owned by Seller and located on, or attached to, the Land; (ii) all supplies owned by Seller and used in the maintenance or operation of the Clubhouse located on the Land; (iii) those Permits which are assignable or transferable to Buyer at Closing; (iv) all assignable or transferable service, maintenance, and equipment contracts, and all personal property leases and all other contracts, if any exist, relating to the ownership, maintenance, occupancy, use or operation of the Property and (v) the right to use the name TerraLargo as permitted by Section 7.3 hereof. Buyer acknowledges that there are no transferable warranties from third parties with respect to the Personal Property.

**"Property"** shall mean, collectively, the Improvements, the Land and the Personal Property.

**"Prorations Date"** shall mean 11:59 p.m. on the date prior to the Closing Date.

**"Special Warranty Deed"** shall mean the Special Warranty Deed conveying fee title to the Land to Buyer, duly executed by Seller and acknowledged and in proper form for recordation.

**"Termination Notice"** shall have the meaning set forth in Section 3.2 of this Agreement.

**"Title Commitment"** shall mean the commitment for issuance of an owner's title insurance policy to be issued on the Title Company and delivered to Buyer pursuant to Section 5.1 hereof.

**"Title Company"** shall mean \_\_\_\_\_ as agent for \_\_\_\_\_, which issues the Title Commitment and the owner's title insurance policy to Buyer and mortgagee title insurance policy, if any, to Lender in accordance with the terms hereof.

**"TerraLargo"** shall mean the planned community within which the Land is located.

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Other capitalized terms contained in this Agreement not defined herein shall have the meanings set forth in the Club Plan.

3. Inspection

3.1. Information Regarding Property. Within five (5) days after the Effective Date, Seller shall make available to Buyer at Seller's office for inspection and copying during regular business hours any surveys, financial statements plans, certificates of occupancy, environmental reports, and information about the payment of Club Dues with respect to the Land, which Seller shall make a good faith attempt to locate in its files and which Seller has not already provided to Buyer. All of such information is provided simply as an accommodation to Buyer, and Seller makes no warranties or representations as to their accuracy or completeness. Seller shall incur no liability to Buyer for any information contained in any materials furnished to Buyer or for Seller's failure to furnish any materials in Seller's possession to Buyer. Without limiting the foregoing, Seller shall have no obligation to obtain plans, permits or other information respecting the Property from governmental agencies or utilities.

3.2. Buyer's Inspection Rights. Buyer's obligations hereunder are expressly subject to Buyer's approval of the Property in all respects. Buyer shall have until the Feasibility Date in which to determine whether the Property is acceptable to Buyer in all respects. In the event that Buyer elects not to proceed with the purchase contemplated by this Agreement, Buyer shall deliver to Seller, at no cost to Seller, copies of all Due Diligence Reports within thirty (30) days of Buyer's election not to proceed. If Buyer determines that the Property is not acceptable in its sole discretion and elects not to proceed with the transaction contemplated hereby, Buyer shall on or before the Feasibility Date give written notice of termination to Seller (the "Termination Notice") and upon such delivery this Agreement shall be terminated. Upon such termination and delivery to Seller of all Due Diligence Reports, neither party shall have any further rights nor obligations hereunder, except, however, that Buyer shall remain obligated with respect to the indemnities and obligations contained in Sections 3.4 and 3.5 of this Agreement. Unless Buyer delivers the Termination Notice in a timely manner, this Agreement shall remain in full force and effect, except that the inspection rights contingency in this Section 3.2 shall be deemed satisfied.

3.3. Access. Until the Feasibility Date, and thereafter if this Agreement has not been terminated pursuant to Section 3.2, Buyer and Buyer's agents and contractors shall be entitled to enter upon the Property at all reasonable times established by Seller, but only for the purpose of conducting tests and making site inspections and investigations. In doing so, Buyer agrees not to cause any damage or make any physical changes to the Property or interfere with the rights of any parties who may have a legal right to use or occupy the Property (including, without limitation, those using the Clubhouse, employees, licensees, and service providers). All persons retained by Buyer to conduct such inspections, investigations and tests shall be licensed and maintain liability and property damage insurance in amounts as reasonably requested by Seller. Under no circumstances shall the right of entry granted herein be interpreted as delivery of possession of the Property prior to Closing.

3.4. Indemnification. Buyer shall protect, indemnify, save and hold Seller harmless against any and all claims, demands, fines, suits, actions, proceedings, orders, decrees, judgments, damage or liability (including attorneys' fees, paraprofessional fees and court costs, pre-trial and at all levels of proceedings, including appeals) of any kind or nature, by or in favor of anyone whomsoever, resulting from, arising from, or occasioned in whole or in part by an act or omission by Buyer, its agents, contractors, employees, representatives or invitees in, upon, or about the Property, or from Buyer's inspection, testing, examination and inquiry of or on the Property. The provisions of this Section shall survive the Closing or termination of this Agreement.

3.5. Buyer's Obligations with Respect to Inspections. Buyer shall restore the Property to its original condition promptly after Buyer's independent factual, physical and legal examinations and inquiries of the Property. Buyer shall promptly pay for all inspections and Due Diligence Reports upon the rendering of statements therefore. Buyer shall not suffer or permit the filing of any liens against the Property and if any such liens are filed, Buyer shall promptly cause them to be released or otherwise eliminated from being a lien upon the Property. In the event the transaction contemplated by this Agreement is not closed for any reason whatsoever, Buyer shall remain obligated with respect to the indemnities and other obligations contained in



Section 3.4 and this Section 3.5. The provisions of this Section shall survive the Closing or termination of this Agreement.

3.6. Condition of the Property. If this Agreement is not terminated pursuant to Section 3.2 above, Buyer shall be deemed to have acknowledged that Seller has provided Buyer sufficient opportunity to make such independent factual, physical and legal examinations and inquiries as Buyer deems necessary and desirable with respect to the Property and the transaction contemplated by this Agreement and that Buyer has approved the Property and this transaction in all respects. Buyer is expressly purchasing the Property in its existing condition "AS IS, WHERE IS" with respect to all facts, circumstances and conditions. Seller has no obligation to inspect for, repair or correct any such facts, circumstances, and conditions or to compensate Buyer regarding the Property. From and after Closing, Buyer assumes the full risk with respect to the Property including, without limitation, any liability resulting from the condition of the Property or resulting from any claims by third parties relating to the past, present, or future ownership, use or operation of the Property, with the exception of personal injury claims arising prior to Closing, and by execution hereof Buyer specifically agrees to indemnify and hold Seller harmless from all liability, loss, cost (including reasonable attorneys', paralegals' and legal assistants' fees and court costs pre-trial and at all levels of proceedings, including appeals) arising from the condition of the Property, including those arising from the presence of Foreign Substances on or at the Property. SELLER HEREBY DISCLAIMS ALL WARRANTIES OF ANY KIND OR NATURE WHATSOEVER PERTAINING TO THE CONDITION OF THE PROPERTY (INCLUDING WARRANTIES OF MERCHANTABILITY OR HABITABILITY AND FITNESS FOR PARTICULAR PURPOSES), WHETHER EXPRESSED OR IMPLIED, including warranties with respect to the Property, zoning, land value, availability of access or utilities, presence of Foreign Substances, rights of ingress or egress, governmental approvals, rights of third parties relating to the condition of the Property, future restrictions upon use or sale, or the soil or water conditions of the Land. Buyer further acknowledges that Buyer is not relying upon any representation of any kind or nature made by Seller, or any of its employees or agents with respect to the Property and that, in fact, no such representations were made, except as expressly set forth in this Agreement. Buyer hereby specifically releases Seller from any and all claims, losses, liabilities, fines, charges, damages, injuries, penalties, response costs, and expenses of any and every kind, whatsoever (whether known or unknown) relating to the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release of any Foreign Substance on the Property, if any, including without limitation, any residual contamination, in, on, under or about the Property or affecting natural resources, whether prior to or following Closing. Each covenant, agreement, representation, and warranty of Buyer contained in this Section 3.6 of this Agreement shall survive the Closing or termination of this Agreement.

3.7. Pending Litigation. Seller has no knowledge of any pending or threatened litigation or claims by third parties or governmental entities respecting the Property except for the Pending Litigation.

4. Purchase Price and Terms of Payment; Closing Adjustments.

4.1. Purchase Price. The purchase price ("**Purchase Price**") of the Property shall be \_\_\_\_\_ AND \_\_\_\_\_/100 DOLLARS (\$ \_\_\_\_\_) subject only to prorations and adjustments herein provided (see Club Plan for Purchase Price).

4.2. Payment of Purchase Price. The Purchase Price shall be paid, all cash at closing, as follows:

4.2.1. Institutional Loan. Buyer's obligations hereunder are contingent upon its obtaining, by the Feasibility Date a commitment from an institutional lender ("**Lender**") for an acquisition loan secured by a first mortgage and security agreement and/or secured by an assignment and pledge of the Club Dues payable pursuant to the Club Plan (hereinafter, the "**Institutional Loan**") in an amount equal to the Purchase Price with terms acceptable to Buyer and subject to conditions to be satisfied by Buyer or with respect to the Property as are customary in loans of similar type and size in Florida. If Buyer does not give Seller written notice, on or before the Feasibility Date, that Lender has issued a loan commitment containing the terms and conditions set forth in this subsection, and which is capable of being closed as between Lender and Buyer, not later than the Closing Date, then either party may terminate this

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Agreement by written notice to the other and the terms of Section 3.2 regarding termination shall apply.

4.3. Closing Adjustments and Prorations. Except as otherwise provided in this Section, all adjustments and prorations to the Purchase Price payable at Closing shall be computed as of the Prorations Date. Buyer shall be responsible for all items after the Prorations Date. All prorations shall be based on thirty (30) day months. Such adjustments and prorations shall include the following:

4.3.1. Taxes and Assessments; Pending and Certified Liens. All *ad valorem* real estate taxes, special taxing district assessments and personal property taxes and all assessments associated with the Property for the year of Closing shall be prorated as of the Prorations Date upon the amount of such taxes for the year of Closing if the amount of such taxes is known at the time of Closing; if such amount cannot be then ascertained, proration shall be based upon the amount of the taxes, with the maximum discount allowed by law, for the preceding year. If any tax prorations shall be based upon the amount of taxes for the year preceding the year of Closing; such taxes, at the request of any party hereto, shall be reprorated and adjusted between the parties, on the basis of the November payment, forthwith after the tax bills for the year of Closing are received. County or other public liens, if any, certified or for which the work has been substantially completed on the date of this Agreement shall be paid by Seller and any other such liens shall be assumed by Buyer; provided, however, that if any assessments are payable in installments, the installment due for the year in which Closing occurs shall be prorated between Seller and Buyer, and Buyer shall assume responsibility for payment of all installments for subsequent years.

4.3.2. Club Dues. All Club Dues and any other amounts due to Seller as dues arising out of the Club Plan shall be prorated as of the Prorations Date. Buyer shall receive a credit at Closing against the Purchase Price for any Club Dues paid to Seller as of the Prorations Date but applicable to any period after the Prorations Date. By way of example, pre-paid Club Dues received by Seller prior to Closing for periods after the Closing shall be credited to Buyer. Upon collection by Buyer of any Club Dues relating to the period prior to the Prorations Date, Buyer shall promptly deliver such amounts to Seller, and it shall be conclusively deemed that any amounts received after Closing by Buyer from any Owner (as defined in the Club Plan) whose account was not current on the Closing Date shall be applied first to satisfy amounts attributable to Seller for periods prior to the Proration Date and then to amounts due to Buyer. By way of example, if the Closing occurs mid-month, and Buyer receives a payment of Club Dues for such month after Closing, Buyer shall prorate the payment and remit to Seller the portion of the payment due to Seller under this Agreement. Buyer shall not change collection counsel with respect to any collection matters pending on the Prorations Date. The current pending collections matters are listed on Exhibit H attached hereto and made a part hereof. Buyer acknowledges that Seller has prepaid certain legal fees and Seller shall be entitled to reimbursement of such amounts advanced to the extent they are collected by legal counsel from and after Closing.

4.3.3. Payables. All of Seller's accounts payable incurred in the ordinary course of business in connection with the ownership and operation of the Property including amounts payable to vendors and other trade payables as of the Prorations Date, are herein called the "Payables". Seller agrees that between the Effective Date and the Closing Date all Payables shall be paid and discharged in the ordinary course of business. Any Payables that would have been paid by Seller in ordinary course of business not paid on or before the Prorations Date and not discovered until after the Closing Date shall be paid by Seller at such time as they are discovered, provided such are discovered within one hundred and eighty (180) days of the Closing Date.

4.3.4. Revenues. All revenue generated from periods prior to the Closing Date shall be attributable to Seller. If payment for any such items received by Buyer after Closing, Buyer shall promptly remit such amounts to Seller (it being understood that any amounts owed by third parties shall be applied first towards amounts owed for periods prior to the Closing Date and last towards amounts owned for periods subsequent to the Closing Date).

4.3.5. Cash. There are no separate operating accounts and no reserves to be transferred respecting the Club.

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4.3.6. Fuel and Utilities. Fuel, water charges and other utilities upon the Property, if any, shall be adjusted and apportioned as of the Prorations Date. Deposits, if any, made by Seller, or any manager of the Property on behalf of Seller, or any predecessor in title as security under any utility or public service contract shall be credited to Seller to the extent that the same remains on deposit for the benefit, and in the name of, Buyer. If such deposits cannot remain on deposit for the benefit of Buyer, Buyer shall place new deposits with the utility company(ies) and the existing deposits shall be released to Seller prior to Closing. Readings will be secured for all utilities as close as practicable to the Prorations Date, and the remaining meter charge, if any, for the intervening time shall be apportioned on the basis of such last reading.

4.3.7. Contracts; Leases. All prepayments made under any continuing contracts or leases affecting the Property, if any, including, but not limited to, garbage removal and maintenance agreements shall be adjusted and apportioned as of the Prorations Date and Seller shall receive a credit for any deposits.

4.3.8. Inventory and Supplies. The cost of all inventory and supplies on hand as of the Proration Date shall be credited to Seller.

4.3.9. Other Prorations. In addition to the previously stated adjustments and prorations at Closing the parties shall also make such adjustments and prorations with respect to operating revenues and expenses to the Purchase Price as are customary and usual in transactions similar to the transaction contemplated by this Agreement.

4.3.10. Reprorations and Post-Closing Adjustments. If any adjustments or prorations cannot be apportioned or adjusted at Closing by reason of the fact that final or liquidated amounts have not been ascertained or are not available as of such date, the parties agree to apportion or adjust such items on the basis of their best estimates of the amounts at Closing and to re-prorate any and all of such amounts promptly when the final or liquidated amounts are ascertained. In the event of any omissions or mathematical error on the closing statement, or if the prorations, apportionments and computations shall prove to be incorrect for any reason, the same shall be promptly adjusted when determined and the appropriate party paid any monies owed. This provision shall survive the Closing for a period of twelve (12) months as to *ad valorem* taxes and six (6) months as to all other adjustments and no claims for adjustment may be made thereafter.

4.3.11. Intent of Prorations Provisions. The intent of the prorations and adjustments provided for herein is that Seller shall bear all expenses of operation of the Property and shall receive all income therefrom accruing through the Prorations Date, and Buyer shall bear all such expenses and receive all such income accruing thereafter.

4.4. Costs and Expenses. All Closing costs and expenses including, but not limited to, the cost of recording the Special Warranty Deed, documentary stamp taxes and surtax on the Special Warranty Deed, and the title insurance premium for the owner's title insurance policy to be provided by Title Agent and issued to Buyer after Closing, shall be paid by Buyer. Buyer shall also pay for the cost of any survey obtained by Buyer. Attorneys' fees, consulting fees, and other due diligence expenses shall be borne by the party incurring such expense. By way of example, Seller shall pay its own legal fees and costs and these shall not be charged to home owners in the event the transaction contemplated by this Agreement does not close.

## 5. Title; Survey.

5.1. Evidence of and Encumbrances Upon Title. Seller's counsel has delivered or will deliver a form Title Commitment prepared by Seller's counsel and approved by Title Company for issuance by the Title Agent. The Title Commitment shall be the basis upon which Buyer shall review the status of title to the Property. Buyer shall review the Title Commitment to determine whether title is free and clear of liens, encumbrances, and objections other than following, herein referred to as the "Acceptable Encumbrances".

5.1.1. The standard printed exceptions in the Title Commitment, provided, however, that to the extent allowed by the Title Company and Florida law the standard printed exceptions for parties in possession and construction liens may be deleted from the owner's title insurance policy based upon Seller's Affidavit and the standard printed exception for matters that would be reflected on a current survey and for easements not shown by the public records may

be deleted if Buyer obtains a current survey, as contemplated by Section 5.3 hereof, which satisfies the requirements of the Title Company;

5.1.2. Zoning and other regulatory laws and ordinances affecting the Property;

5.1.3. Easements for public utilities and drainage;

5.1.4. Any matters reflected on the plats of the Land;

5.1.5. Any other matters of record that do not render title unmarketable;

5.1.6. All matters in the Title Commitment not objected to by Buyer within the Title Review Period (as hereinafter defined);

5.1.7. Any matters which are approved in writing by Buyer (including those contemplated by this Agreement); and

5.1.8. Any matters created by or against Buyer.

5.2. Review of Evidence of Title.

5.2.1. Buyer shall have seven (7) days from the later of (i) the Effective Date or (ii) the date which Seller's counsel delivers to Buyer the Title Commitment within which to cause the Title Commitment to be examined and to notify Seller in writing of any liens, encumbrances, or exceptions other than the Acceptable Encumbrances (the "Title Review Period"). If no liens, encumbrances, or exceptions other than the Acceptable Encumbrances are shown, or if Buyer shall fail to notify Seller in writing of any liens, encumbrances or exceptions other than the Acceptable Encumbrances prior to the end of the Title Review Period, then except as provided in Section 5.4, Buyer shall be deemed to have waived any right to object to the status of title and all matters reflected on the Title Commitment shall be deemed Acceptable Encumbrances. Subject to Section 5.4, Buyer shall thereupon, with respect to the status of title to the Land and Improvements, be obligated to close the purchase at the time and in the manner herein specified.

5.2.2. If prior to the end of the Title Review Period, Buyer gives written notice of any liens, encumbrances or exceptions, other than the Acceptable Encumbrances, then Seller shall have the right, but not the obligation, to attempt to remove, discharge or correct such liens, encumbrances or exceptions and shall have a period of sixty (60) days after receipt of notice thereof ("Cure Period") in which to do so (and if necessary the Closing Date shall be extended). Seller shall not in any event be obligated to pay any sums of money or to litigate any matter in order to remove, discharge or correct any lien, encumbrance or exceptions, except, however, that Seller shall be required to satisfy, release, or discharge any mortgages in a liquidated amount voluntarily placed on the Property by Seller or by Seller's predecessors in title. If Seller shall be unable or otherwise refuses to remove or discharge such other liens, encumbrances or exception within such period, then Buyer may, at its option, either accept title in its then existing condition without reduction of the Purchase Price or terminate this Agreement by giving written notice of termination within three (3) Business Days after the first to occur of (a) receipt of Seller's written notice that Seller is unable to remove the lien, encumbrance, or exception or (b) the expiration of the Cure Period. If Buyer shall fail to give written notice of termination within the aforesaid three (3) Business Day period, Buyer shall irrevocably be deemed to have accepted title in its existing condition (and all outstanding title matters shall then constitute Acceptable Encumbrances). If Buyer shall elect to terminate this Agreement pursuant to this paragraph, this Agreement shall terminate, and thereafter neither Seller nor Buyer shall have any further rights or obligations hereunder except that Buyer shall remain obligated with respect to the provisions of Sections 3.4 and 3.5 hereof.

5.3. Survey. Prior to the Feasibility Date, Buyer may cause a survey of the Land to be prepared at Buyer's sole cost and expense. Any such survey shall conform to ALTA requirements and be certified to Buyer, Seller, the Title Company, and Title Company's agent. If any encroachments not acceptable to Buyer are shown, Buyer may give written notice of objection to Seller prior to the Feasibility Date, in which case any such encroachment shall be treated in the same manner as a title defect pursuant to Section 5.2.2 above; provided, however, that Buyer shall have no right to object to (a) any matters which constitute Acceptable Encumbrances; or (b) any public utility facilities or equipment located on the Land regardless of

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whether or not an easement for such facilities or equipment has been granted or recorded in the Public Records (and Buyer acknowledges that it is likely that such facilities and equipment do in fact exist on the Land); or (c) any matters reflected on any existing survey delivered by Seller to Buyer on or before the tenth (10<sup>th</sup>) day after the Effective Date. If, however, Buyer fails to obtain a survey, or if Buyer obtains a survey, but fails to give written notice of objection prior to the Feasibility Date, all encroachments and other matters of survey shall be deemed approved by Buyer and shall constitute Acceptable Encumbrances.

5.4. Title Update. Seller shall cause the Title Company to update the Title Commitment, to a date not earlier than seven (7) days prior to the Closing Date. If the updated Title Commitment contains exceptions which arose subsequent to the effective date of the Title Commitment and which do not constitute Acceptable Encumbrances, Buyer may file written objection thereto within three (3) Business Days after receipt thereof, but in any event prior to completion of the Closing. If Buyer timely and properly files written objection to any such other item, all of the provisions of the last portion of Section 5.2.2 shall then be applicable. If the updated Title Commitment contains no exceptions, other than those reflected on the Title Commitment delivered pursuant to Section 5.1 and other Acceptable Encumbrances or if Buyer fails to give written notice of objection to Seller as and when required, all matters reflected on the updated Title Commitment shall be deemed Acceptable Encumbrances, and this Agreement shall remain in full force and effect and Buyer shall be obligated to complete the transaction as required by this Agreement.

6. Closing.

6.1. Closing Date; Place. The Closing shall occur on or before \_\_\_\_\_ ("Closing Date"). Closing shall take place at 10:00 A.M. in the offices of Seller's counsel.

6.2. Seller's Deliveries. At Closing, Seller shall deliver or cause to be delivered to Buyer the following instruments (in addition to any other instruments contemplated by this Agreement):

6.2.1. Special Warranty Deed with respect to the Land and Improvements, in the form of Exhibit B hereto;

6.2.2. Affidavit in the form of Exhibit C hereto;

6.2.3. Bill of Sale with respect to those items of Personal Property which are furniture, fixtures, and equipment in the form of Exhibit D, including all of the Inventory;

6.2.4. Assignment and Assumption Agreement in the form of Exhibit E hereto;

6.2.5. Buyer-Seller Closing Statement;

6.2.6. Evidence satisfactory to the Title Company and Title Agent in its reasonable discretion of Seller's authority to execute the instruments delivered at the Closing and to consummate the Closing;

6.2.7. Any instruments required by Section 9 of this Agreement.

6.3. Buyer's Deliveries. At Closing Buyer shall deliver or cause to be delivered to Seller the following instruments (in addition to any other instruments required by the terms of this Agreement):

6.3.1. Assignment and Assumption Agreement, in the form of Exhibit E hereto;

6.3.2. Buyer-Seller Closing Statement;

6.3.3. Certificate of Good Standing from the Secretary of State of Buyer's organization;



6.3.4. Incumbency Certificate specifying the officers of Buyer authorized to act for and on behalf of Buyer with respect to the transaction contemplated hereby together with Secretary's Certificate evidencing adoption of resolutions authorizing Buyer to consummate the purchase;

6.3.5. A general release, in the form of **Exhibit F** hereto, in favor of Seller; and

6.3.6. Any instruments required by Section 9 of this Agreement.

6.4. Possession. Possession of the Property shall be surrendered at the Closing.

7. Certain Special Provisions Which Shall Survive Closing. In addition to other provisions of this Agreement which by their terms survive the Closing of the purchase and sale, the following provisions shall also survive the Closing. Seller will include the provisions indicated in the Special Warranty Deed by which Seller conveys the Land to Buyer (in which case Buyer shall be required to execute the Special Warranty Deed to confirm Buyer's agreement to such provisions) or in a separate instrument to be executed by Buyer and Seller on or before Closing and recorded in the Public Records of the County.

7.1. Club Plan. Buyer recognizes that the Land is subject to the Club Plan and to the rules and regulations established pursuant thereto. Buyer agrees to comply with all of the terms and provisions thereof insofar as they relate to or affect the Land unless Buyer, as Club Owner, elects to terminate the Club Plan after Closing.

7.2. Employees. Seller will terminate the employment of all service personnel of Seller performing services at the Club ("**Employees**") effective as of the Closing Date other than those Employees that Seller intends to offer alternate employment at other locations. Seller will be responsible for payment of all accrued, unpaid wages, salaries, benefits, vacation and other income items due to the Employees as of the Closing Date and all taxes and other amounts due from Seller in respect thereof. Subsequent to the Feasibility Date, Buyer and Seller shall agree upon a method to advise Employees of the pending sale and to notify them that their continued employment shall be discretionary with Buyer (except Employees that remain employed by Seller shall not receive such notice); provided, however, Buyer may interview each Employee and consider the possibility of hiring such Employee from and after Closing Date.

7.3. Use of Name. Due to the integrated nature of TerraLargo and the product within TerraLargo, Buyer may use the TerraLargo name and logo with respect to the Clubhouse for general and typical Club purposes (e.g., aerobic classes), but not for commercial use not related to the Club without prior written consent of Seller, which may be granted or withheld in Seller's sole and absolute discretion, and, if given, may be subject to such terms and conditions as Seller shall deem appropriate. By way of example, if Buyer elects to allow catered events or concessions within the Club, the name and logo may be used as such activities are part of typical Club activities without Seller's consent. If Buyer wishes to open a real estate sales office for homes in the Club, the name and logo cannot be used without Seller's prior consent. Seller grants (but without warranty or representation) to Buyer the right to identify the Club by reference to its location "at TerraLargo" and for general and typical Club purposes.

7.4. Effect. All of the provisions of this Section 7 shall survive the Closing in accordance with their terms and shall constitute restrictions, covenants, conditions, easements, and obligations which run with title to all or any portion of the Land and which are servitudes upon the Land and shall be binding upon Buyer and Buyer's successors in title to the Land and inure to the benefit of and be enforceable by Seller and such of its assigns as to which Seller specifically assigns its rights hereunder. Such an assignment may be of all or only certain rights hereunder and may be made on an exclusive or non-exclusive basis, and in any event without the necessity of any joinder or consent of Buyer or any other party. Absent an express assignment as aforesaid, no person or entity shall be deemed a third party beneficiary or a successor assignee of Seller with respect to any of the provisions of this Section 7 or have any rights to enforce any of the provisions contained herein, nor shall Seller have any duty to any third party to do so.

7.5. Enforcement; Remedies. So long as Seller has a development interest in TerraLargo, which interest must be established by Seller, violation or attempted violation by Buyer of any provision contained in this Section 7 shall entitle Seller to exercise any and all remedies available in equity. In addition Seller shall have the right to proceed in equity to compel compliance of the violated or breached provision. In the event of any litigation arising

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from any violation or attempted violation by Buyer, the prevailing party shall be entitled to reimbursement from the losing party for all attorneys fees and costs incurred pre-trial and at all levels of proceedings, including appeal. Any failure by Seller to enforce any provision of this Section 7 in any one instance shall not be deemed a waiver by Seller to enforce the same or any other provision in the future.

8. Indemnification. Seller shall indemnify and save harmless Buyer against any and all claims, actions, damage or liability (including attorney's fees and the costs to prepare any new easements) resulting from Seller's use of the Property after the Closing pursuant to this Agreement. Seller shall also indemnify and save harmless Buyer against any and all claims, actions, damage or liability resulting from any personal injury claim respecting the Property occurring before Closing. This Section shall survive Closing.

9. Warranties And Representations.

9.1. Buyer's Warranties and Representations. Buyer warrants and represents that: (a) Buyer has the full right, power, and authority to purchase the Property from Seller as provided in this Agreement and the Club Plan and to carry out Buyer's obligations hereunder; (b) this Agreement has been duly executed and delivered by Buyer; (c) the execution of this agreement and the Closing to occur hereunder does not and will not violate any contract, covenant or other agreement to which Buyer may be a party or by which Buyer may be bound; and (d) Buyer is purchasing the Property for the continued operation of the Club.

9.2. Seller's Warranties and Representations. Seller warrants and represents that: (a) Seller has the full right, power, authority to sell the Property to Buyer as provided in this Agreement and the Club Plan and to carry out Seller's obligations hereunder; (b) Seller is a corporation duly organized and in good standing under the laws of the State of Florida; (c) subject to Section 14.14 hereof, all requisite corporate action necessary to authorize Seller to enter into this Agreement and to carry out Seller's obligations has been obtained; and (d) this Agreement has been duly authorized, executed and delivered by Seller.

9.3. Survival. The provisions of this Section 9 shall survive the Closing.

10. Assignment. The nature of Buyer's composition as a not-for-profit entity all of the members of which are residents of TerraLargo constitutes a material inducement and a substantial part of the consideration for sale of the Property by Seller to Buyer. Therefore, Buyer may not assign this Agreement, nor may any of Buyer's rights hereunder be transferred in any manner to any person or entity, without Seller's specific prior written consent, which consent may be withheld by Seller in Seller's sole and absolute discretion.

11. Brokerage. Buyer represents and warrants to Seller that Buyer has not contacted or entered into any agreement with any real estate broker, agent, finder, or any other party entitled to a commission in connection with this transaction, and that Buyer has not taken any action which would result in any real estate broker's, finder's, or other fees or commissions being due or payable to any other party with respect to this transaction. Seller represents and warrants to Buyer that Seller has not contacted or entered into any agreement with any real estate broker, agent, finder, or any other party entitled to a commission in connection with this transaction, and that Seller has not taken any action which would result in any real estate broker's, finder's, or other fees or commission being due and payable to any other party with respect to this transaction. Each party hereby agrees to indemnify, protect, defend (with counsel approved by the party to be indemnified) and to hold the other party harmless from any loss, liability, damage, costs, or expense (including, but not limited to, reasonable attorneys' fees at trial and all appellate levels) resulting to the other party from a breach of the representation and warranty made by such party herein. The provisions of this Section 11 shall survive the Closing and termination of this Agreement.

12. Default.

12.1. Buyer's Default. If this transaction shall not be closed because of default by Buyer, all of Seller's and Buyer's rights hereunder shall be terminated, except that Buyer shall remain obligated pursuant to Sections 3.4 and 3.5 hereof. If, after Closing, Buyer shall default in any obligation of Buyer contained herein, Seller shall be entitled to all remedies available in equity.

12.2. Seller's Default. If this transaction shall not be closed because of default of Seller, neither Seller nor Buyer shall have any further rights or obligations hereunder, except that Buyer shall remain obligated pursuant to Sections 3.4 and 3.5 hereof; or Buyer shall have the right to sue for specific performance of this Agreement; provided, however, such specific performance remedy shall be available to Buyer only upon Buyer's full satisfaction of each of Buyer's obligations under this Agreement, including, but not limited to, the issuance of the commitment for the Institutional Loan. The option selected by Buyer shall be Buyer's sole and exclusive remedy, and in no event shall Buyer be entitled to any damages.

12.3. No Obligation of Seller after Closing. Buyer expressly acknowledges and agrees that Seller has no obligations with respect to the Property pursuant to this Agreement which survive Closing, except as specifically set forth herein. The provisions of this Section shall survive the Closing.

13. No Joint Venture. Buyer acknowledges and agrees that Seller is not a venturer, co-venturer, insurer, guarantor or partner of Buyer in Buyer's ownership or operation of the Property, and that Seller bears and shall bear no liability whatsoever resulting from or arising out of Buyer's ownership and operation of the Property. Therefore, Buyer agrees to indemnify and hold harmless Seller from and against any and all losses, claims, demands, damages, costs and expenses of whatsoever kind or nature including reasonable attorneys' fees, related to or arising out of any claims against Seller as a result of Buyer's ownership or operation of the Property. The provisions of this Section 13 shall survive the Closing.

14. Miscellaneous.

14.1. Risk of Loss. Seller agrees to give Buyer prompt notice of any casualty affecting the Property or of any actual or threatened (to the extent that Seller has current actual knowledge thereof) taking or condemnation of all or any portion of the Property. If before Closing, there shall occur:

14.1.1. damage to any portion of the Property caused by casualty which would cost an amount equal to or greater than five percent (5%) of the Purchase Price of the Property to repair; or

14.1.2. the taking or condemnation of all or any portion of the Property which would interfere with the intended use of the Property; then, in such event, Buyer shall have the right to terminate this Agreement by written notice thereof delivered to Seller within ten (10) days after Buyer has received notice from Seller or otherwise learns of that event or at the Closing accept all interest of Seller in and to any insurance proceeds or condemnation awards payable to Seller on account of that event, less sums which Seller incurs before the Closing to repair any of the damage. If Buyer elects to terminate this Agreement, neither party shall have any further obligations under this Agreement except that Buyer shall remain liable for the obligations contained in Section 3.4 and 3.5 hereof. If Buyer does not so timely elect to terminate this Agreement, then the Closing shall take place as provided herein and there shall be assigned to Buyer at the Closing all interest of Seller in and to any insurance proceeds or condemnation awards payable to Seller on account of that event, less sums which Seller incurs before the Closing to repair any of the damage.

If before Closing there occurs:

(a) damage to the Property caused by casualty which would cost less than five percent (5%) of the Purchase Price to repair; or

(b) the taking or condemnation of a portion of the Property which would not interfere with the intended use of the Property;

then, Buyer may not terminate this Agreement and there shall be assigned to Buyer at the Closing all interest of Seller in and to any insurance proceeds or condemnation awards payable to Seller on account of that event, less sums which Seller incurs before the Closing to repair any of the damage.

14.2. Construction. The terms "Seller" and "Buyer" whenever used in this Agreement shall include the successors and permitted assigns of the respective parties hereto, provided, however, that Buyer's right of assignment is restricted by the provisions hereof. Whenever used,



the singular number shall include the plural and the plural the singular, and the use of any gender shall include all genders. The term "including" as used herein shall in all instances mean "including, but not limited to". The term "attorney fees" wherever used in this Agreement shall include attorneys fees, paralegal fees and paraprofessional fees. The headings in this Agreement are intended solely for convenience of reference and shall be given no effect in the interpretation of this Agreement. This Agreement and any related instruments shall not be construed more strictly against one party than against the other by virtue of the fact that initial drafts may have been prepared by counsel for one of the parties, it being recognized that this Agreement and any related instruments are the product of extensive negotiations between the parties hereto.

14.3. Counterparts. This Agreement may be executed in two or more counterparts, a complete set of which shall be deemed an original, but a complete set of which will constitute the same agreement.

14.4. Severability and Waiver. Invalidation of any one Section or provision of this Agreement by judgment or court order shall in no way affect any other Section or provision. Failure of any party to this Agreement to insist on the full performance of any of its provisions by the other party shall not constitute a waiver of such performance unless the party failing to insist on full performance of the provision declares in writing signed by it that it is waiving such performance. A waiver of any breach under this Agreement by any party, unless otherwise expressly declared in writing, shall not be a continuing waiver or waiver of any subsequent breach of the same or other provision of this Agreement.

14.5. Governing Law. This Agreement is being executed and delivered, and is intended to be performed, in the State of Florida. The laws of the State of Florida (without regard to conflicts of law) shall govern the validity, construction, enforcement and interpretation of this Agreement. Venue for any action arising hereunder shall lie exclusively in the Federal or State courts where the Property is located.

14.6. Further Acts. In addition to the acts and deeds recited in this Agreement and contemplated to be performed, executed, and/or delivered under this Agreement, Seller and Buyer agree to perform, execute and/or deliver or cause to be performed, executed and/or delivered at Closing or after Closing all further acts, deeds, and assurances reasonably necessary to consummate the transactions or agreements contemplated hereby.

14.7. Radon Gas. RADON IS A NATURALLY OCCURRING RADIOACTIVE GAS THAT, WHEN IT HAS ACCUMULATED IN A BUILDING IN SUFFICIENT QUANTITIES, MAY PRESENT HEALTH RISKS TO PERSONS WHO ARE EXPOSED TO IT OVER TIME. LEVELS OF RADON THAT EXCEED FEDERAL AND STATE GUIDELINES HAVE BEEN FOUND IN BUILDINGS IN FLORIDA. ADDITIONAL INFORMATION REGARDING RADON AND RADON TESTING MAY BE OBTAINED FROM YOUR COUNTY HEALTH DEPARTMENT.

14.8. Notices. All notices, demands, requests, and other communications required or permitted hereunder shall be in writing. All such notices, demands, requests and other communications (and copies thereof) shall be deemed to be received: (a) upon receipt or refusal to accept receipt if sent by messenger, upon personal delivery to the party to whom the notice is directed; (b) if sent by telecopier, upon electronic or telephonic confirmation of receipt from the receiving telecopier machine; or (c) upon receipt or refusal to accept receipt if sent by overnight courier, with request for next Business Day delivery, addressed as follows (or to such other address as the parties may specify by notice given pursuant to this Section):

TO SELLER:

Avatar Properties, Inc.  
201 Alhambra Circle  
12<sup>th</sup> Floor  
Coral Gables, Florida 33134  
Attention: Patricia Kimball Fletcher, Esq.  
Phone no.: (305) 442-7000  
Facsimile no.: (305) 448-9927

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WITH A COPY TO:

Jeffrey R. Margolis, Esq.  
Jeffrey R. Margolis, P.A.  
Duane Morris, LLP  
200 South Biscayne Blvd., Suite 3400  
Miami, Florida 33131  
Phone no.: (305) 960-2255  
Facsimile no.: (305) 960-2201

TO BUYER:

TerraLargo Community Association, Inc.

\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Phone no.: \_\_\_\_\_  
Facsimile no.: \_\_\_\_\_

WITH A COPY TO:

\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Phone no.: \_\_\_\_\_  
Facsimile no.: \_\_\_\_\_

14.9. Entire Agreement and Amendment. This Agreement contains the entire understanding between Buyer and Seller with respect to the subject matter hereof. Neither this Agreement nor any provision hereof may be modified, amended, changed, waived, discharged or terminated orally. Any such action may occur only by an instrument in writing signed by the party against whom enforcement of the modification, change, waiver, discharge or termination is sought.

14.10. Recording. This Agreement shall not be recorded and Buyer agrees that recording same constitutes a default by Buyer.

14.11. Exhibits. The Exhibits which are referenced in and attached to this Agreement are incorporated in, and made a part of, this Agreement for all purposes.

14.12. Time of the Essence. It is expressly agreed by Seller and Buyer that time is of the essence with respect to this Agreement. If the final day of any period or any date of performance under this Agreement falls on a date which is not a Business Day, then the final day of the period or the date of performance, as applicable, shall be extended to the next day which is a Business Day.

14.13. No Third Party Beneficiary. This Agreement is solely between Seller and Buyer and no other party shall be entitled to rely upon any provision hereof for any purpose whatsoever.

14.14. Requisite Senior Management Approval. This Agreement is subject to approval by Seller's senior management. Neither the submission of any proposal or this Agreement for examination to Buyer, nor any correspondence or course of dealing between Buyer or Seller shall constitute a reservation of or option for the Property or in any manner bind Seller. No contract or obligation on the part of Seller shall arise until this Agreement is approved by Seller's senior management and fully executed and unconditionally delivered by Seller. If this Agreement is executed and returned by Seller to Buyer, the requirement for senior management approval shall be deemed to have been obtained. Buyer may revoke its offer to purchase the Property pursuant to this Agreement if Seller does not execute the same within five (5) days of Seller's receipt of this Agreement fully executed by Buyer.

14.15. Limitation on Liability. Buyer expressly agrees that the obligations and liabilities of Seller under this Agreement and any document referenced herein shall not constitute personal obligations of the officers, directors, employees, agents, attorneys, shareholders or other principals and representatives of Seller or Seller's affiliates. Notwithstanding anything to the contrary, Seller's liability, if any, arising in connection with this Agreement or with the Property shall be limited to Seller's interest in the Property for the recovery of any judgment against

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Seller, and Seller shall not be personally liable for any such judgment or deficiency after execution thereon. The limitations of liability contained in this Section shall apply equally to, and inure to the benefit of Seller's present and future officers, directors, agents, employees, attorneys, shareholders or other principals and representatives and their respective heirs, successors and assigns.

14.16. Confidentiality.

14.16.1. Buyer acknowledges the confidential and proprietary nature of (i) all information, documents, agreements, correspondence, contracts, reports, files, books, records, financial data, and other information delivered or made available by Seller to Buyer pursuant to this Agreement, and (ii) all results, reports, analyses, and other products of tests, inspections, studies, and other due diligence conducted on the Property pursuant to this Agreement, and (iii) this Agreement and the contents and provisions hereof (collectively, the "**Confidential Information**"). Buyer agrees to keep and hold all of the Confidential Information confidential and agrees not to use it for any purpose other than the purposes contemplated by this Agreement. Buyer shall not disclose any of the Confidential Information to, or discuss any of the Confidential Information to, or discuss any of the Confidential Information with, any third person other than Buyer's counsel, consultants and advisors, the board of directors of Buyer, the homeowners within TerraLargo and any potential Lender.

14.16.2. Each of Buyer and Seller agrees with the other that prior to Closing it will not make any public announcement about the purchase and sale transaction contemplated hereby or any of the terms hereof, including without limitation any of the Confidential Information, without the prior written consent of the other, except for announcements to the homeowners of TerraLargo at membership meetings or otherwise.

14.16.3. The provisions of this Section 14.16 shall survive the Closing and any termination of this Agreement.

14.17. Attorneys Fees. In the event of any litigation between the parties to this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees, paraprofessional fees, and court costs, pretrial and at all levels of proceedings, including appeals. This provision shall survive termination or cancellation of this Agreement and closing of this Agreement.

[ADDITIONAL TEXT AND SIGNATURES APPEAR ON FOLLOWING PAGE]

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14.18. WAIVER OF TRIAL BY JURY. BUYER AND SELLER HEREBY EXPRESSLY COVENANT AND AGREE TO WAIVE THE RIGHT TO TRIAL BY JURY IN CONNECTION WITH ANY LITIGATION OR JUDICIAL PROCEEDINGS RELATING TO, DIRECTLY OR INDIRECTLY, OR CONCERNING THIS AGREEMENT OR THE CONDUCT, OMISSION, ACTION, OBLIGATION, DUTY, RIGHT, BENEFIT, PRIVILEGE OR LIABILITY OF A PARTY HEREUNDER TO THE FULL EXTENT PERMITTED BY LAW. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN AND IS KNOWINGLY, INTENTIONALLY AND VOLUNTARILY MADE BY BUYER AND SELLER. BUYER AND SELLER HAVE HAD AN OPPORTUNITY TO SEEK LEGAL COUNSEL CONCERNING THIS WAIVER. THIS WAIVER IS INTENDED TO AND DOES ENCOMPASS EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A JURY TRIAL WOULD OTHERWISE ACCRUE. BUYER AND SELLER FURTHER CERTIFY AND REPRESENT TO EACH OTHER THAT NO PARTY, REPRESENTATIVE OR AGENT OF BUYER OR SELLER (INCLUDING, BUT NOT LIMITED TO, THEIR RESPECTIVE COUNSEL) HAS REPRESENTED, EXPRESSLY OR OTHERWISE, TO BUYER OR SELLER OR TO ANY AGENT OR REPRESENTATIVE OF BUYER OR SELLER (INCLUDING, BUT NOT LIMITED TO, THEIR RESPECTIVE COUNSEL) THAT THEY WILL NOT SEEK TO ENFORCE THIS WAIVER OF RIGHT TO JURY TRIAL. THIS PROVISION IS A MATERIAL INDUCEMENT OF ALL PARTIES ENTERING INTO THIS AGREEMENT. THIS WAIVER SHALL APPLY TO THIS AGREEMENT AND ANY FUTURE AMENDMENTS, SUPPLEMENTS OR MODIFICATIONS OF THIS AGREEMENT. THIS PROVISION SHALL SURVIVE ANY TERMINATION OR CANCELLATION OF THIS AGREEMENT OR CLOSING OF THIS AGREEMENT.

IN WITNESS WHEREOF, Buyer and Seller have executed this Agreement, each on the date set forth below.

WITNESSES:

SELLER:

AVATAR PROPERTIES, INC.,  
a Florida corporation

Print Name: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_, 200\_\_

BUYER:

TERRALARGO COMMUNITY  
ASSOCIATION, INC.,  
a Florida not-for-profit corporation

Print Name: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_, 200\_\_

SCHEDULE OF EXHIBITS

- A - Land
- B - Form of Special Warranty Deed
- C - Form of Seller's Affidavit
- D - Form of Bill of Sale
- E - Form of Assignment and Assumption Agreement
- F - Form of General Release from Buyer.
- G - Inventory
- H - Pending Litigation



EXHIBIT A

Legal Description of Land

**EXHIBIT B**

This Instrument Prepared by:

JEFFREY R. MARGOLIS, ESQ.  
JEFFREY R. MARGOLIS, P.A.  
DUANE MORRIS  
200 SOUTH BISCAYNE BLVD., SUITE 3400  
MIAMI, FLORIDA 33131

Grantee's Tax Identification No.:

Property Appraiser's Folio No.:

**SPECIAL WARRANTY DEED**

THIS SPECIAL WARRANTY DEED (this "**Deed**") is made as of the \_\_\_ day of \_\_\_\_\_, 200\_\_\_, from AVATAR PROPERTIES, INC., a Florida corporation ("**Grantor**") having a mailing address of 201 Alhambra Circle, Suite 1200, Coral Gables, Florida 33134, to TERRALARGO COMMUNITY ASSOCIATION, INC., a Florida not-for-profit corporation, the mailing address of which is \_\_\_\_\_ (the "**Grantee**").

**WITNESSETH:**

THAT Grantor, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00), and other good and valuable consideration, the receipt of which is hereby acknowledged, by these presents does grant, bargain and sell unto Grantee, and Grantee's successors and assigns forever, all the right, title, interest, claim and demand that Grantor has or may have in and to the following described real property (the "**Property**") located and situate in the County of Polk and State of Florida, to wit:

**[LEGAL DESCRIPTION]**

The Property is conveyed subject to the following:

[NOTE: The "subject to" items and matters, which shall be listed in the Special Warranty Deed actually delivered if a closing occurs, shall be those comprising the Acceptable Encumbrances (as defined in Section 5 of the Agreement for Sale and Purchase of Property) and those permitted to be shown as set forth in Section 5 of the Agreement for Sale and Purchase of Property.]

Grantor does hereby warrant, and will defend, the title to the Property hereby conveyed, subject as aforesaid, against the lawful claims of all persons claiming by, through or under Grantor, but none other.

Grantee, by acceptance of this Special Warranty Deed, automatically agrees for itself, and its successors and assigns, to observe and to be bound by all of the terms and conditions set forth in the [identify section that lists Acceptable Encumbrances] and all future amendments thereto applicable to the Property.

IN WITNESS WHEREOF, Grantor has caused these present to be executed and its seal to be affixed the day and year first above written.

**WITNESSES:**

AVATAR PROPERTIES, INC. a Florida corporation

Print Name: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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(488-63)

STATE OF FLORIDA )  
 ) SS.:  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by \_\_\_\_\_ as \_\_\_\_\_ of AVATAR PROPERTIES, INC., a Florida corporation who is personally known to me or who produced \_\_\_\_\_ as identification on behalf of the corporation.

My commission expires:

NOTARY PUBLIC  
State of Florida at Large

Print name: \_\_\_\_\_



**EXHIBIT C**

**SELLER'S AFFIDAVIT**

BEFORE ME, the undersigned authority personally appeared \_\_\_\_\_  
("Affiant"), who upon being duly cautioned and sworn, deposes and states as follows:

Affiant is the \_\_\_\_\_ of Avatar Properties, Inc., a Florida corporation ("**Seller**"),  
and has been authorized by Seller to make this Affidavit on Seller's behalf.

1. Seller is the owner in fee simple of those premises legally described as follows (the  
"**Property**");

[LEGAL DESCRIPTION]

2. Seller has possession of the Property, there is no other person in possession who has any  
right of ownership in the Property and there are no facts known to Seller which could give rise to  
a claim of ownership being adversely asserted to any of the Property.

3. The Property is free and clear of all liens, taxes, encumbrances and claims of every kind,  
nature and description whatsoever, except for (i) real estate and personal property taxes for the  
year 200\_\_ and subsequent years, which are not yet due and payable and (ii) easements,  
restrictions, or other title matters of record, or listed in the schedule of exceptions in the title  
insurance policy to insure the fee simple title to the Property to be received by Buyer in this  
transaction pursuant to the title commitment issued in this transaction. To the extent Seller has  
failed to pay income, use, sales or any other tax accruing prior to Closing respecting the  
Property, Seller shall be responsible for the same.

4. Within the past ninety (90) days there have been no improvements, alterations or repairs  
to the Property for which the costs thereof remain unpaid, and within the past ninety (90) days  
there have been no claims for labor or material furnished for repairing or improving the Property  
that remain unpaid.

5. There are no construction, materialmen's, or laborers' liens against the Property.

6. Seller has made no additional improvements to the Property and has received no notice of  
(proposed) back assessments from appraiser's office or bill for back assessments from tax  
collector.

7. The personal property contained in the Property, and which, if any, is being sold to Buyer  
mentioned below, is also free and clear of all liens, encumbrances, claims and demands  
whatsoever.

8. All fixtures, equipment, appliances, machines, plumbing, heating and air conditioning  
systems located within or upon this Property have been paid for in full and there are no chattel  
mortgages, title retention or conditional sales contracts or other encumbrances outstanding  
against the same.

9. There are no actions or proceedings now pending in any State or Federal Court to which  
Seller is a party, including, but not limited to proceedings in bankruptcy, receivership or  
insolvency, nor are there any judgments or liens of any nature which constitute or could  
constitute a charge or lien upon such Property.

10. There are no existing contracts for sale affecting the Property except for the contract  
between Seller and Buyer.

11. Seller has received no warning, notices, notice of violation, administrative complaints,  
judicial complaints or other formal notices from any governmental agency alleging that  
conditions on the Property are in violation of environmental laws, regulations, ordinances or  
rules.

12. This affidavit is (i) made for the purpose of inducing TERRALARGO COMMUNITY  
ASSOCIATION, INC., a Florida not-for-profit corporation (the "**Buyer**") to purchase the  
Property, (ii) for the purpose of inducing \_\_\_\_\_ as agent for  
\_\_\_\_\_ to issue a policy of title insurance in connection with this

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**EXHIBIT D**

**BILL OF SALE**

AVATAR PROPERTIES, INC., a Florida corporation ("**Seller**") for the sum of TEN AND NO/100 (\$10.00) DOLLARS, lawful money of the United States, paid by TERRALARGO COMMUNITY ASSOCIATION, INC., a Florida not-for-profit corporation (the "**Buyer**") the receipt whereof is hereby acknowledged, has granted, bargained, sold, transferred and delivered, and by these presents does grant, bargain, sell, transfer and deliver unto the such Buyer all of the personal property, now existing, owned by Seller as set forth in attached **Exhibit A** and located on the property described on **Exhibit B**.

To HAVE AND TO HOLD the same unto such Buyer forever. Wherever used herein the term "**Seller**" and "**Buyer**" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals and any successors and assigns of the parties hereto.

AND Seller covenants that Seller is the lawful owner of such goods and chattels; that they are free from all liens and/or encumbrances; and Seller will warrant and defend the title of such goods and chattels against the lawful claims and demands of all persons claiming by, through, or under Seller, but none other. The conveyances hereunder are on an "as-is" basis.

IN WITNESS WHEREOF, Seller has hereunto set its hand and seal effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_.

WITNESSES:

**SELLER**

AVATAR PROPERTIES, INC., a Florida corporation

Print Name: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[SEAL]

STATE OF FLORIDA )

) SS.:

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 200\_\_ by \_\_\_\_\_ as \_\_\_\_\_ of Avatar Properties, Inc., a Florida corporation, who is personally known to me or who produced \_\_\_\_\_ as identification, on behalf of the corporation.

My commission expires: \_\_\_\_\_

NOTARY PUBLIC

State of Florida at Large

Print name: \_\_\_\_\_



EXHIBIT A

**Inventory**

Clubhouse Inventory List:

Outside:

Inside:

EXHIBIT B

Legal Description of Land

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Club Terralargo

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Exhibit E

This Instrument Prepared by:

JEFFREY R. MARGOLIS, ESQ.  
JEFFREY R. MARGOLIS, P.A.  
DUANE MORRIS  
200 SOUTH BISCAYNE BLVD., SUITE 3400  
MIAMI, FLORIDA 33131

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Agreement") is executed by and between AVATAR PROPERTIES, INC., a Florida corporation ("Seller") and TERRALARGO COMMUNITY ASSOCIATION, INC., a Florida not-for-profit corporation (the "Buyer").

RECITALS:

A. Pursuant to the Agreement for Sale and Purchase of Property, executed by Seller and Buyer as of the \_\_\_\_ day of \_\_\_\_\_, 200\_\_ ("Purchase Agreement"), Seller shall assign and Buyer shall assume those items of Personal Property and the Club Plan (as defined in the Purchase Agreement).

B. The Personal Property includes those service and equipment contracts (the "Contracts") set forth in Exhibit A attached hereto.

C. Seller is the owner of the following described real property located in Polk County, Florida ("Property");

[LEGAL DESCRIPTION]

NOW THEREFORE, Seller and Buyer agree as follows:

1. Recitals. The above Recitals are true and correct and are incorporated into and form a part of this Agreement.
2. Assignment. Seller hereby assigns all of its right, title and interest in the Property including, without limitation, the Contracts and all of its rights in and under the Club Plan to Buyer, on an "as-is" basis. Seller shall have no further rights with respect to the Property or the Club Plan. By way of example, and not of limitation, from and after this date Buyer shall be Club Owner under the Club Plan and Seller shall have no rights, including lien rights, under the Club Plan. Seller may deliver a copy of this Agreement to any party to a Contract.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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Club TerraLargo  
(55 of 63)



3. Assumption. Buyer hereby assumes all of Seller's obligations under and with respect to the Property including, without limitation, the Contracts, and all of the obligations and rights of Seller as Club Owner under the Club Plan.

IN WITNESS WHEREOF, this Agreement is signed and sealed as of the \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

WITNESSES:

AVATAR PROPERTIES, INC.,  
a Florida corporation

Print Name: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

[CORPORATE SEAL]

STATE OF FLORIDA )

) SS.:

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by \_\_\_\_\_ as \_\_\_\_\_ of Avatar Properties, Inc., a Florida corporation, who is personally known to me or who produced \_\_\_\_\_ as identification on behalf of the corporation.

My commission expires: \_\_\_\_\_

NOTARY PUBLIC

State of Florida at Large

Print name: \_\_\_\_\_

WITNESSES:

TERRALARGO COMMUNITY  
ASSOCIATION, INC., a Florida not-for-profit  
corporation

Print Name: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

[CORPORATE SEAL]

STATE OF FLORIDA )

) SS.:

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by \_\_\_\_\_ as \_\_\_\_\_ of TerraLargo Community Association, Inc., a Florida not-for-profit corporation, who is personally known to me or who produced \_\_\_\_\_ as identification on behalf of the corporation.

My commission expires: \_\_\_\_\_

NOTARY PUBLIC

State of Florida at Large

Print name: \_\_\_\_\_

EXHIBIT A

Service and Equipment Contracts

**EXHIBIT F**

This Instrument Prepared  
by:

JEFFREY R. MARGOLIS, ESQ.  
JEFFREY R. MARGOLIS, P.A.  
DUANE MORRIS, LLP  
200 SOUTH BISCAYNE BLVD., SUITE 3400  
MIAMI, FLORIDA 33131

**GENERAL RELEASE**

**KNOW ALL MEN BY THESE PRESENTS:** That TERRALARGO COMMUNITY ASSOCIATION, INC., a Florida not-for-profit corporation (the "**Releasor**"), the mailing address of which is \_\_\_\_\_, for and in consideration of the sum of TEN DOLLARS (\$10.00), and other valuable consideration, received from or on behalf of AVATAR PROPERTIES, INC., a Florida corporation (the "**Releasee**"), the mailing address of which is 201 Alhambra Circle, Suite 1200, Coral Gables, Florida 33134, the receipt whereof is hereby acknowledged,

**DOES HEREBY** remise, release, acquit, satisfy, and forever discharge the Releasee, and its officers, directors, shareholders, employees, attorneys, agents, affiliates, affiliates' officers, directors, shareholders, employees, attorneys, agents, members, partners, representatives, and all other related parties who may be jointly liable with them, (collectively, the "**Releasee's Affiliates**") of and from all, and all manner of, action and actions, cause and causes of action, suits, debts, sums of money, accounts, bills, covenants, controversies, agreements, promises, damages (including consequential, incidental, punitive, special or other), judgments, executions, claims, liabilities and demands, whatsoever, at law and in equity (including, but not limited to, claims founded on tort, contract, contribution, indemnity or any other theory whatsoever), which such Releasor ever had, now has, or which any officer, director, shareholder, representative, successor, or assign of such Releasor, hereafter can, shall or may have, against such Releasee and the Releasee's Affiliates, for, upon or by reason of any matter, cause or thing, whatsoever, from the beginning of the world to the day of these presents, whether known or unknown (either through ignorance, oversight, error, negligence or otherwise), and whether matured or unmatured, and which matter, cause, or thing, relates, in any manner, directly or indirectly, regarding (a) the Releasor, the common areas (the "**Common Areas**") within TerraLargo (the "**Community**"), Club TerraLargo (the "**Club**"), more particularly described on **Exhibit A** hereto, or the improvements thereon (collectively, the "**Property**"), or (b) any occurrences, circumstances, and/or documentation (e.g., the Declaration and/or the Club Plan) whatsoever,

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Club TerraLargo  
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relating to the Community, the Common Areas, the Club and/or the Property, which occurred or took place prior to the transfer of the Property from Releasee to Relcasor (the "**Closing**"), except (i) representations of Releasee in that certain Agreement for Sale and Purchase dated \_\_\_\_\_, 200\_\_ between Releasor and Releasee which survive the Closing, (ii) warranties of the Releasee contained in that certain Special Warranty Deed delivered by Releasee in connection with such Closing and (iii) personal injury claims respecting the Property, if any, occurring prior to Closing.

**IN WITNESS WHEREOF**, we have hereunto set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

Signed, sealed and delivered  
in the presence of:

TERRALARGO COMMUNITY  
ASSOCIATION, INC., a Florida not-for-profit  
corporation

Print Name: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

[CORPORATE SEAL]

STATE OF FLORIDA )  
 ) SS.:  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_ by \_\_\_\_\_ as \_\_\_\_\_ of TERRALARGO COMMUNITY ASSOCIATION, INC., a Florida not-for-profit corporation, on behalf of such corporation who [ ] is personally known to me or [ ] has produced \_\_\_\_\_ as identification and did not take an oath.

[NOTARIAL SEAL]

Name: \_\_\_\_\_

Notary Public, State of \_\_\_\_\_

Commission No.: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

EXHIBIT A

Legal Description of Land

EXHIBIT G

Inventory

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EXHIBIT H

Pending Litigation Matters

JOINDER

TERRALARGO COMMUNITY ASSOCIATION, INC. does hereby join in the TerraLargo Club Plan to which this Joinder is attached, and the terms thereof are and shall be binding upon the undersigned and its successors in title.

IN WITNESS WHEREOF, the undersigned has executed this Joinder on this 24<sup>th</sup> day of October, 2007.

WITNESSES:

**TERRALARGO COMMUNITY ASSOCIATION, INC.**, a Florida not-for-profit corporation

*Maribel G. Pila*  
Print Name: Maribel G. Pila

*Nora E. Sanchez*  
Print Name: NORA E. SANCHEZ

By:

*Hank Yunes*  
Name: Hank Yunes  
Title: Vice President

{SEAL}

STATE OF FLORIDA )  
 ) SS.:  
COUNTY OF MIAMI-DADE )

The foregoing instrument was acknowledged before me this 24<sup>th</sup> day of October, 2007 by Hank Yunes as Vice President of TERRALARGO COMMUNITY ASSOCIATION, INC., a Florida not-for-profit corporation, who is personally known to me or who produced N/A as identification, on behalf of the corporation.

My commission expires:

*Maribel G. Pila*  
NOTARY PUBLIC, State of Florida  
Print name: Maribel G. Pila



EXHIBIT 5

PERMIT





An Equal  
Opportunity  
Employer

# Southwest Florida Water Management District

**Bartow Service Office**  
170 Century Boulevard  
Bartow, Florida 33830-7700  
(863) 534-1448 or  
1-800-492-7862 (FL only)  
SUNCOM 572-6200

**Lecanto Service Office**  
Suite 226  
3600 West Sovereign Path  
Lecanto, Florida 34461-8070  
(352) 527-8131

2379 Broad Street, Brooksville, Florida 34604-6899  
(352) 796-7211 or 1-800-423-1476 (FL only)  
SUNCOM 628-4150 TDD only 1-800-231-6103 (FL only)  
On the Internet at: WaterMatters.org

**Sarasota Service Office**  
6750 Fruitville Road  
Sarasota, Florida 34240-9711  
(941) 377-3722 or  
1-800-320-3503 (FL only)  
SUNCOM 531-6900

**Tampa Service Office**  
7601 Highway 301 North  
Tampa, Florida 33637-6759  
(813) 985-7481 or  
1-800-838-0797 (FL only)  
SUNCOM 578-2070

**Talmadge G. "Jerry" Rice**  
Chair, Pasco

**Judith C. Whitehead**  
Vice Chair, Hernando

**Neil Combee**  
Secretary, Polk

**Jennifer E. Closshey**  
Treasurer, Hillsborough

**Thomas G. Dabney**  
Sarasota

**Heldi B. McCree**  
Hillsborough

**Sally Parks**  
Pinellas

**Todd Presman**  
Pinellas

**Maritza Rovira-Perino**  
Hillsborough

**Patsy C. Symons**  
DeSoto

**David L. Moore**  
Executive Director

**William S. Blenky**  
General Counsel

January 26, 2007

Anthony S. Iorio, Jr., Vice President  
Avatar Properties, Inc.  
900 Towne Center Drive  
Poinciana, FL 34759

Subject: Notice of Proposed Agency Action - **Approval**  
Proposed Permit No. 43028277.002

Dear Mr. Iorio:

This letter constitutes notice of proposed agency action by the Southwest Florida Water Management District on the above-referenced proposed permit. Please read thoroughly the enclosed copy of the proposed permit.

A recommendation of approval of the proposed permit will be presented to the District Governing Board for consideration at its next meeting on February 27, 2007, at the District Headquarters, 2379 Broad Street, Brooksville, FL 34604-6899.

You or any person whose substantial interests are affected by the District's action regarding a permit may request an administrative hearing in accordance with Sections 120.569 and 120.57, Florida Statutes, (F.S.), and Chapter 28-106, Florida Administrative Code, (F.A.C.), of the Uniform Rules of Procedure. A request for hearing must (1) explain how the substantial interests of each person requesting the hearing will be affected by the District's action, or proposed action; (2) state all material facts disputed by the person requesting the hearing or state that there are no disputed facts; and (3) otherwise comply with Chapter 28-106, F.A.C. Copies of Sections 28-106.201 and 28-106.301, F.A.C., are enclosed for your reference. A request for hearing must be filed with (received by) the Agency Clerk of the District at the District's Brooksville address within 21 days of receipt of this notice. Receipt is deemed to be the fifth day after the date on which this notice is deposited in the United States mail. Failure to file a request for hearing within this time period shall constitute a waiver of any right you or such person may have to request a hearing under Sections 120.569 and 120.57, F.S. Mediation pursuant to Section 120.573, F.S. to settle an administrative dispute regarding the District's action in this matter is not available prior to the filing of a request for hearing.

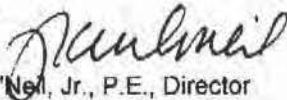
If you do not wish to request an administrative hearing but wish to address the Governing Board informally concerning the proposed decision, you may appear before the Governing Board at the time and place stated above. Such an appearance shall not provide a basis for appealing the decision of the Governing Board pursuant to Chapter 120, F.S.

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Enclosed is a "Noticing Packet" that provides information regarding District Rule, 40D-1.1010, F.A.C. which addresses the notification of persons having substantial interests that may be affected by the District's action in this matter. The packet contains guidelines on how to provide notice of the District's action, and a notice that you may use.

If you have any questions concerning this matter, please contact the Bartow Regulation Department.

Sincerely,



Paul W. O'Neil, Jr., P.E., Director  
Regulation Performance Management Department

PWO:jjm

Enclosures: Proposed Permit with conditions, Rules 28-106.201 and 28-106.301, and Noticing Packet

cc: William A. Hartmann, P.E., Chastain-Skillman, Inc.  
USACOE

(1378-155)



SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT  
ENVIRONMENTAL RESOURCE  
INDIVIDUAL CONSTRUCTION MODIFICATION  
PERMIT NO. 43028277.002

**Expiration Date: February 27, 2012****PERMIT ISSUE DATE:** February 27, 2007

This permit is issued under the provisions of Chapter 373, Florida Statutes, (F.S.), and the Rules contained in Chapters 40D-4 and 40, Florida Administrative Code, (F.A.C.). The permit authorizes the Permittee to proceed with the construction of a surface water management system in accordance with the information outlined herein and shown by the application, approved drawings, plans, specifications, and other documents, attached hereto and kept on file at the Southwest Florida Water Management District (District). Unless otherwise stated by permit specific condition, permit issuance constitutes certification of compliance with state water quality standards under Section 401 of the Clean Water Act, 33 U.S.C. 1341. All construction, operation and maintenance of the surface water management system authorized by this permit shall occur in compliance with Florida Statutes and Administrative Code and the conditions of this permit.

**PROJECT NAME:** TerraLargo Phase 2, Shoreline Enhancement at Meadowview Lake

**GRANTED TO:** Avatar Properties, Inc.  
900 Towne Center Drive  
Poinciana, FL 34759

**ABSTRACT:** This permit authorization is for the shoreline enhancement of Meadowview Lake. This permit authorization is a modification of a portion of Environmental Resource Permit No. 43028277.001, (547-lot residential subdivision). The project site is located on the north side of Sleepy Hill Road, approximately one-half mile west of U.S. Highway 98 in the city of Lakeland, Polk County. Information regarding the surface water management system, 100-year floodplain and wetlands is contained within the tables and comments below.

**OP. & MAINT. ENTITY:** TerraLargo Community Association, Inc.

**COUNTY:** Polk

**SEC/TWP/RGE:** 26,35/27S/23E

**TOTAL ACRES OWNED  
OR UNDER CONTROL:** 645.00

**PROJECT SIZE:** 5.00 Acres

**LAND USE:** Residential

**DATE APPLICATION FILED:** May 4, 2006

**AMENDED DATE:** N/A

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I. Water Quantity/Quality

This modification will not involve any changes/modifications to the previously permitted detention ponds. The two wet detention ponds will continue to provide water quality treatment and attenuation for this residential subdivision. No adverse off-site/on-site water quality or quantity impacts are expected.

A mixing zone is not required.  
 A variance is not required.

II. 100-Year Floodplain

Encroachment (Acre-Feet of fill)	Compensation (Acre-Feet of excavation)	Compensation Type*	Encroachment Result**(feet)
0.00	0.00	NE [ X ]	Depth [ N/A ]

\*Codes [ X ] for the type or method of compensation provided are as follows:

NE = No Encroachment

N/A = Not Applicable

\*\*Depth of change in flood stage (level) over existing receiving water stage resulting from floodplain encroachment caused by a project that claims MI type of compensation.

III. Environmental Considerations

Wetland/Surface Water Information

Count of Wetlands: 1

Wetland Name	Total Acres	Not Impacted Acres	Permanent Impacts		Temporary Impacts	
			Acres	Functional Loss*	Acres	Functional Loss*
Meadowview Lake	3.55	0.00	0.33	0.21	3.22	0.45
TOTAL	3.55	0.00	0.33	0.21	3.22	0.45

\* For impacts that do not require mitigation, their functional loss is not included.

**Wetland Comments:** The project area includes 3.55 acres of lake fringe wetland associated with Meadowview Lake. Permanent impacts are proposed to 0.33-acre of lake fringe wetland due to the construction of two access areas to the lake. Temporary impacts are proposed to 3.22 acres of lake fringe wetland due to the removal of nuisance plant species along the shoreline of Meadowview Lake.

Mitigation Information

Count of Mitigation: 2

Mitigation Name	Creation/Restoration		Enhancement		Preservation		Other	
	Acres	Functional Gain	Acres	Functional Gain	Acres	Functional Gain	Acres	Functional Gain
WC#2	0.50	0.22	0.00	0.00	0.00	0.00	0.00	0.00
Lake fringe shoreline	0.00	0.00	3.22	0.48	0.00	0.00	0.00	0.00
TOTAL	0.50	0.22	3.22	0.48	0.00	0.00	0.00	0.00

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