

ASPEN TECHNOLOGY INC /DE/
Form NT 10-Q
November 13, 2007

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

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FORM 12b-25

NOTIFICATION OF LATE FILING

(Check one): Form 10-K Form 20-F Form 11-K Form 10-Q Form 10-D
 Form N-SAR Form N-CSR

For Period Ended: September 30, 2007

- Transition Report on Form 10-K
- Transition Report on Form 20-F
- Transition Report on Form 11-K
- Transition Report on Form 10-Q
- Transition Report on Form N-SAR

For the Transition Period Ended:

Read Instructions (on back page) Before Preparing Form. Please Print or Type.

Nothing in this form shall be construed to imply that the Commission has verified any information contained herein.

If the notification relates to a portion of the filing checked above, identify the Item(s) to which the notification relates:

PART I REGISTRANT INFORMATION

ASPEN TECHNOLOGY, INC.

Full Name of Registrant

Former Name if Applicable

200 Wheeler Road

Address of Principal Executive Office (*Street and Number*)

Burlington, MA 01803

City, State and Zip Code

PART II RULES 12b-25(b) AND (c)

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If the subject report could not be filed without unreasonable effort or expense and the registrant seeks relief pursuant to Rule 12b-25(b), the following should be completed. (Check box if appropriate)

- (a) The reason described in reasonable detail in Part III of this form could not be eliminated without unreasonable effort or expense
- (b) The subject annual report, semi-annual report, transition report on Form 10-K, Form 20-F, Form 11-K, Form N-SAR or Form N-CSR, or portion thereof, will be filed on or before the fifteenth calendar day following the prescribed due date; or the subject quarterly report or transition report on Form 10-Q or subject distribution report on Form 10-D, or portion thereof, will be filed on or before the fifth calendar day following the prescribed due date; and
- (c) The accountant's statement or other exhibit required by Rule 12b-25(c) has been attached if applicable.

PART III NARRATIVE

State below in reasonable detail why Forms 10-K, 20-F, 11-K, 10-Q, 10-D, N-SAR, N-CSR, or the transition report or portion thereof, could not be filed within the prescribed time period.

As previously disclosed in a current report on Form 8-K that we filed on June 11, 2007, we have identified errors in our accounting for sales of installments receivable and, as a result, users should not rely upon (a) our previously issued financial statements as of June 30, 2005 and 2006, and for each of the three years in the period ended June 30, 2006, and the related reports of our independent registered public accounting firm for such periods and (b) our previously issued financial statements included in our quarterly reports on Form 10-Q within those years and for each of the quarters ended September 30, 2006, December 31, 2006 and March 31, 2007.

In connection with a review of our financial statements, we identified errors related to our accounting for sales of customer installments receivable to financial institutions or unconsolidated qualifying special purpose entities, which we refer to below as receivable sale facilities. The sale of our installments receivable was designed to meet true sale criteria for legal and accounting purposes and these transactions have historically been accounted for as a sale of assets for accounting purposes and not a secured borrowing. The sold installments receivable serve as collateral under the receivable sales facilities and limited recourse exists against us in the event that the underlying customer does not pay. As further described below, the revised accounting for these transactions will consist of recording the sold assets and an obligation in our consolidated balance sheet as a secured borrowing.

We regained control of these assets when we engaged in new transactions with our customers to license additional software that consolidated the remaining balance of the installment receivable previously sold with a new installment receivable. We sometimes enter into these agreements when we sell additional software or extend the terms of license arrangements. Some arrangements allowed for this recourse, subject to a limit, which was exceeded. Other receivable sale transactions did not allow for this method of

consolidation. Accordingly, the amount and/or method of consolidation of these receivables resulted in the loss of the legal isolation of the assets from us, which is one of the requirements to achieve and maintain sale accounting treatment under Statement of Financial Accounting Standards No. 140, Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities. Under this standard, regaining control for accounting purposes is accounted for in the same manner as a purchase of the assets in exchange for liabilities assumed. Accordingly, we must record the sold installments receivable and an offsetting liability at fair value on the date of the change in control for accounting purposes. We believe that we regained control related to certain installments receivable included in the receivable sales facilities at various dates depending on the level of the repurchase of certain of the sold installment receivables, all of which dates will result in the receivable sale facilities being reported as borrowings for the periods being restated.

We have reviewed thousands of installments receivable transactions dating back to fiscal 2003 as part of a process to determine ending period balances for two new balance sheet accounts a collateral asset for secured borrowings and a secured borrowing liability. Based on the significant amount of work that we have completed, we estimate that the balances of each of these two new related balance sheet items were as follows:

- approximately \$230 million as of June 30, 2005
- approximately \$200 million as of June 30, 2006
- approximately \$200 million as of June 30, 2007

Because the review of the accounting for these transactions is ongoing, these estimates are subject to change, and such changes could be material. We will recognize interest income and interest expense related to these receivables and the collateralized borrowing in the statements of operations. We will also reclassify the proceeds from and payments on the secured borrowing liability as cash flow from financing activities in the statements of cash flows. Previously, all cash flows associated with the sale of receivables were classified as operating activities. In addition, as we complete the review of these transactions, we may determine that other matters may require adjustment to our historical financial statements. After errors were identified in the accounting for sales of installments receivable to financial institutions, the Audit Committee of our Board of Directors and our management determined to engage in a detailed review of other accounts in our financial statements, including a comprehensive review of historic positions reported on income tax returns and the related reporting in our financial statements in order to determine the propriety and accuracy of the positions taken and amounts recorded and disclosed.

Due to the time needed to compile the data for thousands of installment receivable transactions, to prepare and summarize the analysis of the installment receivable transactions, to complete the detailed review of other accounts in our financial statements to allow us to determine if other adjustments are required to our historical audited financial statements, and to record the restatement adjustments to our historical audited financial statements with appropriate disclosure, we could not complete the preparation of our restated financial statements in order to timely file the Form 10-K for our fiscal year ended June 30, 2007 and we have not filed the Form 10-K as of the date hereof. Further, we cannot complete the preparation of our restated financial statements in order to timely file our quarterly report on Form 10-Q for the quarter ended September 30, 2007.

cannot complete the preparation of our restated financial statements in order to timely file our quarterly report on Form 10-Q for the quarter ended September 30, 2007.

SEC 1344 (03-05) **Persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number.**

(Attach extra Sheets if Needed)

PART IV OTHER INFORMATION

- (1) Name and telephone number of person to contact in regard to this notification

Bradley T. Miller
(Name)

(781)
(Area Code)

221-6400
(Telephone Number)

- (2) Have all other periodic reports required under Section 13 or 15(d) of the Securities Exchange Act of 1934 or Section 30 of the Investment Company Act of 1940 during the preceding 12 months or for such shorter period that the registrant was required to file such report(s) been filed ? If answer is no, identify report(s).

Yes No

Due to the time needed to compile the data, prepare and summarize the analysis, and complete the adjustments to our historical financial statements, we have not been able to complete the preparation of our restated financial statements in order to file our annual report on Form 10-K for the fiscal year ended June 30, 2007.

- (3) Is it anticipated that any significant change in results of operations from the corresponding period for the last fiscal year will be reflected by the earnings statements to be included in the subject report or portion thereof?

Yes No

If so, attach an explanation of the anticipated change, both narratively and quantitatively, and, if appropriate, state the reasons why a reasonable estimate of the results cannot be made.

Due to the matters described in Part III above, we cannot provide at this time an estimate of our results of operations for the fiscal quarter ended September 30, 2007. We previously announced on September 12, 2007 that we anticipate reporting cash and cash equivalents of \$132 million at June 30, 2007, which would reflect an increase of 31% from \$101 million at March 31, 2007. The anticipated balance of cash and cash equivalents should be considered a preliminary estimate pending completion of the audit and the finalization of our financial statements for the fiscal year ended June 30, 2007.

ASPEN TECHNOLOGY, INC.

(Name of Registrant as Specified in Charter)

has caused this notification to be signed on its behalf by the undersigned hereunto duly authorized.

Date **November 9, 2007**

By
Bradley T. Miller
Senior Vice President and Chief Financial Officer

INSTRUCTION: The form may be signed by an executive officer of the registrant or by any other duly authorized representative. The name and title of the person signing the form shall be typed or printed beneath the signature. If the statement is signed on behalf of the registrant by an authorized representative (other than an executive officer), evidence of the representative's authority to sign on behalf of the registrant shall be filed with the form.

ATTENTION

Intentional misstatements or omissions of fact constitute Federal Criminal Violations (See 18 U.S.C. 1001).

3,837	840	4,677 ⁽⁶⁾	*
Jonathan Fels			
52,616	60,000	112,616 ⁽⁷⁾	*
Michael Levy			
95,959	50,000	145,959 ⁽⁸⁾⁽⁹⁾	1.3 %
Randy L. Kotler			
None	None	None	*
Patricia K. Fletcher			
11,968	None	11,968	*
All current directors and executive officers as a group (consisting of 12 persons of whom 11 beneficially own shares of Common Stock)			
2,474,894	69,899	2,544,793 ⁽⁴⁾⁽⁵⁾⁽⁶⁾⁽⁸⁾⁽⁹⁾	22.3 %

* Represents less than one percent.

(1) The information as to securities owned by directors, officers and nominees was furnished to Avatar by such directors, officers and nominees.

(2) Includes for each incumbent non-management director 840 restricted stock units (RSUs) awarded as additional compensation on May 28, 2009, which RSUs become convertible into an equal number of shares of Common Stock upon the earlier of the first anniversary of the date of the award or the date immediately preceding the 2010 Annual Meeting of Stockholders. Also includes Stock Units representing deferred directors' fees, which Stock Units become issuable as shares of Common Stock at the earlier of a date designated by the individual director or the date of the individual's separation from service as a director. (See Directors' Compensation.)

(3) Calculated pursuant to Rule 13d-3(d) of the Exchange Act. Under Rule 13d-3(d), shares not outstanding which are subject to options, warrants, rights or conversion privileges exercisable within 60 days are deemed outstanding for the purpose of calculating the number and percentage of shares owned by such person, but are not deemed outstanding for the purpose of calculating the percentage owned by each other person listed. On April 5, 2010, there were 11,355,451 shares of Common Stock outstanding.

(4) Includes 2,000 shares owned by his children, over which shares Mr. Kelfer shares voting and dispositive power. Of the 228,469 shares owned directly by Mr. Kelfer, 225,356 shares are held in a non-margin account which may be considered security for a margin account, and 3,113 shares are held in a margin account and may be, or may become, pledged as security for the account.

(5) Includes 840 RSUs and 3,374 Stock Units. Also includes 2,107,763 shares owned by ODAV. Mr. Nash is the sole member of Joshua Nash II LLC, the managing member of ODAV and, therefore, may be deemed to own beneficially the shares of Common Stock owned by ODAV. See Notes(1) and (2) to the preceding table included in Principal Stockholders.

(6) Shares owned directly by Ms. Stewart are held in a margin account and may be, or may become, pledged as security for the account.

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(7) Includes 60,000 shares issuable upon exercise of options. Also includes 47,708 shares issued under Avatar's equity incentive plan which were contractually restricted until vested pursuant to the Separation and Release Agreement with Mr. Fels, dated December 29, 2009 (see Employment and Other Agreements Agreements with Jonathan Fels). Shares owned directly by Mr. Fels are held in a margin account and may be, or may become, pledged as security for the account.

(8) Includes 50,000 shares issuable upon exercise of options and 1,500 shares owned by his children, over which shares Mr. Levy has sole voting and dispositive power. Does not include 4,750 shares issuable upon conversion of \$250,000 principal amount of 4.50% Notes as conversion privileges currently are not exercisable within 60 days. Shares owned directly by Mr. Levy are held in a margin account and may be, or may become, pledged as security for the account.

(9) Of the shares directly owned by Messrs. Kelfer and Levy, 57,267 and 47,708 shares, respectively, represent contractually restricted shares of Common Stock issued under Avatar's equity incentive plan. Until such shares vest pursuant to the terms of an agreement with Avatar and, therefore, become unrestricted, they are forfeitable to Avatar (together with any dividends thereon) and may not be sold. Unvested shares may be voted.

CORPORATE GOVERNANCE AND CODES OF BUSINESS CONDUCT AND ETHICS

Corporate Governance Guidelines and Principles

Avatar's Board of Directors has adopted Corporate Governance Guidelines and Principles as a component of the flexible governance framework within which the Board, assisted by its committees, directs Avatar's affairs. The Corporate Governance Guidelines and Principles, which define the role of the Board of Directors, are available on Avatar's website at www.avatarholdings.com.

Director Independence

The Board of Directors has determined that all nominees for election or reelection meet the qualification standards set forth in Avatar's Corporate Governance Guidelines and Principles and meet the independence criteria under the rules and regulations of The Nasdaq Stock Market, Inc. (Nasdaq) except for Joshua Nash and Gerald D. Kelfer. In making such determination, the Board considered relevant facts regarding such nominee, in particular that each nominee determined to be independent does not have a material relationship with Avatar, either directly (other than as a nominee and/or stockholder) or as a stockholder, director, officer, partner or affiliate of an organization that has a relationship with Avatar. The Board has further determined that all current members of the Audit Committee meet the more stringent independence requirements of the U.S. Securities and Exchange Commission (SEC) and Nasdaq for Audit Committee membership.

Code of Business Conduct and Ethics

The Board of Directors has adopted a Code of Business Conduct and Ethics applicable to all directors, officers and employees of Avatar and a Supplemental Code of Ethics for the CEO, CFO and other Senior Financial Officers. These Codes of Business Conduct and Ethics are available on Avatar's website at www.avatarholdings.com.

Related Person Transaction Policy

To supplement the broader provisions of Avatar's Code of Business Conduct and Ethics, the Board of Directors has adopted a policy and procedures for review and approval or ratification by the Audit Committee of transactions in which the Company participates and a related person has a material direct or indirect interest. A related person means: each director and executive officer of the Company; any director nominee; any greater than five percent stockholder; any immediate family member of any of the foregoing; and any company or another entity that employs or is controlled by any of them, or in which any of them have a material ownership or financial interest.

Generally under the policy, any director, executive officer or nominee who intends to enter into a related person transaction, and any employee of the Company who intends to cause the Company to enter into a related person transaction, is required to disclose all material facts regarding the proposed transaction to the Committee.

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The transaction will be reviewed by the Committee and, in its discretion, approved or ratified. In connection with approving or ratifying a transaction, the Committee considers, in light of the relevant facts and circumstances, whether or not the transaction is in, or not inconsistent with, the best interests of the Company. Thus, it may consider many factors, such as the relationship of the related person with the Company, the materiality or significance of the transaction to the Company and the related person, the business purpose and reasonableness of the transaction, whether the transaction is comparable to a transaction that could be available to the Company on an arm's-length basis, and the impact of the transaction on the Company's business and operations. The related person transaction policy is available on Avatar's website at www.avatarholdings.com.

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1. ELECTION OF DIRECTORS

At the Annual meeting, eight directors are to be elected for the ensuing year and until their respective successors are duly elected and qualified. Stockholders have cumulative voting rights with respect to election of directors. Under cumulative voting, each stockholder is entitled to the same number of votes per share as the number of directors to be elected (or, for purposes of this election, eight votes per share). A stockholder may cast all such votes for a single nominee or distribute them among the nominees, as such stockholder wishes, either by so marking his ballot at the meeting, by specific voting instructions sent to Avatar with a signed proxy, or via Internet or by telephone in accordance with instructions on the proxy card. In connection with the solicitation of proxies, discretionary authority to cumulate votes is being solicited. Unless authority to vote for the nominees for director is withheld, it is the intention of the persons named in the accompanying proxy to vote the proxies in such manner as will elect as directors the nominees named below.

All of the nominees were elected at the May 28, 2009 Annual Meeting of Stockholders. The Board of Directors met ten times during 2009, including the annual meeting of directors held immediately following the 2009 Annual Meeting of Stockholders.

The Board of Directors does not contemplate that any of the persons named below will be unable, or will decline, to serve. However, if any of such persons is unable or declines to serve, the persons named in the accompanying proxy may vote for another person or persons in their discretion.

The following paragraphs set forth information with respect to each nominee for director, including positions currently held, prior occupation and business experience for more than the past five years. In concluding an individual should be recommended to serve as a director, the Nominating and Corporate Governance Committee considers each person's business and professional skills and experience, qualifications and attributes, as well as personal integrity and judgment. Although it does not have a formal diversity policy, the Committee considers, among other attributes, diversity of gender, professional experience and skills of the individuals to be recommended to the Board for nomination for election to the Board. Except as otherwise indicated, the following nominees have not been principally employed by any subsidiary or affiliate of Avatar. There are no family relationships between any nominee, director or executive officer of Avatar.

Paul D. Barnett, Director since May 2007

Mr. Barnett, 49, has been Managing Director at Ulysses Management, LLC, a private investment firm, since February 2005. Prior thereto, he was Managing Principal at Odyssey Investment Partners, LLC, a private investment firm, from 1997 to 2004. From 2001 to August 2005, Mr. Barnett served as Director and Chairman of the Audit Committee of Dresser, Inc. He currently serves on the Board of Managers for Sentry Security Holdings, LLC, Communications Capital Group, LLC and PresAir, LLC, private Delaware limited liability companies. Mr. Barnett's experience and expertise in investment management, investment banking and the securities markets are valuable assets for Avatar when seeking financing or raising capital.

Milton Dresner, Director since July 1995

In 1960, Mr. Dresner, 84, became the Founding Partner of The Highland Companies, a diversified real estate development and management organization. He also serves as a Director of Marco Polo Pure China Fund and Corinthian Capital; and previously served on the boards of BioTime, Inc., Childtime Child Care, Inc., Hudson General Corporation, and Flagship Federal Savings Bank, among others. With nearly 50 years of experience in all facets of the real estate industry, Mr. Dresner contributes substantial background and knowledge to Avatar's Board regarding real estate operations.

Roger W. Einiger, Director since May 2006

Since 2001, Mr. Einiger, 62, has been President of Hardscrabble Advisors, LLC, a private investment firm. Previously he spent three decades at Oppenheimer & Co. and its successor companies, most

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recently serving as Vice Chairman. Following the sale of Oppenheimer in 1997, he served as Vice Chairman of CIBC Oppenheimer Corp., an investment banking and brokerage company, and as a consultant to Canadian Imperial Bank of Commerce until 2001. Mr. Einiger previously served as a Director of BPW Acquisition Corp. and a Director and member of the Audit Committee of NDS Group plc. He also serves as a director or trustee of several philanthropic and academic organizations. During his tenure with Oppenheimer, Mr. Einiger was responsible for finance, operations, technology, legal and compliance, and human resources departments. His diverse background lends valuable insight to Avatar's Board and the Audit and Compensation Committees on which he serves.

Gerald D. Kelfer, Director since October 1996

Mr. Kelfer, 64, has served, and continues to serve, as Vice Chairman of the Board since December 1996, as President since February 1997, as Chief Executive Officer since July 1997, and as Chairman of the Executive Committee since May 1999. From July 1994 to February 1997, Mr. Kelfer was a principal in Odyssey Partners, L.P., a private investment firm. From 1985 to 1994, he was Executive Vice President, Senior General Counsel and Director of Olympia & York Companies. His experience and expertise in real estate management and purchase and sale transactions make Mr. Kelfer an asset not only to Avatar's Board but also to the management of Avatar's real estate operations.

Joshua Nash, Director since September 2004

Mr. Nash, 48, has been Chairman of the Board of Avatar since September 2004. He is the sole member of Joshua Nash II LLC, the managing member of ODAV LLC, a private limited liability company, formed in September 2003 to manage its investment in Avatar. Mr. Nash has also been General Partner of Ulysses Partners, L.P., a private investment firm, since 1997. He was formerly a General Partner of Odyssey Partners, L.P., a private investment firm, from 1989 until its liquidation in December 2007. For more than five years, Mr. Nash has managed investments, representing assets, including real estate, in excess of \$1 billion. His more than 20 years of experience in investment management and his financial interest in Avatar make him uniquely qualified to serve as Avatar's Chairman.

Kenneth T. Rosen, Director since September 1994

At University of California, Berkeley, Mr. Rosen, 61, has been Professor Emeritus, Haas School of Business, since June 2005 (formerly, Professor, from 1979 to June 2005), and Chairman of the Fisher Center for Real Estate and Urban Economics, since 1981. He is also Chairman of Rosen Real Estate Securities, LLC, a real estate hedge fund, and Chairman of Rosen Consulting Group, a real estate consulting business. Mr. Rosen is also the special real estate advisor to the Davos World Economic Forum, a trustee of the Urban Land Institute, and a member of the boards of directors of several non-profit and for-profit entities that deal with real estate finance and development. Mr. Rosen's more than 30 years of experience in academia and the real estate industry enable him to make valuable contributions to Avatar's Board and its several Committees on which he serves.

Joel M. Simon, Director since May 2004

Mr. Simon, 64, has been Partner and Principal in XRoads Solutions Group, LLC, a national financial advisory and consulting firm, since June 2000. He was formerly Chief Executive Officer and President of Starrett Corporation, from March 1998 to December 1998; Executive Vice President, Chief Operating Officer and Director of Olympia & York Companies (U.S.A.), from 1985 to 1996; and Senior Partner with Margolin, Winer & Evens, LLP, a regional accounting firm, from 1976 to 1984. Mr. Simon also served as a Director, Chairman of the Audit Committee and member of the Compensation Committee of Frederick's of Hollywood Group, Inc. Mr. Simon's extensive financial and operational expertise in many industries, including real estate, make him not only a well-qualified member of Avatar's Board but also Chairman of, and financial expert for, its Audit Committee.

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Beth A. Stewart, Director since May 2001

Since 1998, Ms. Stewart, 53, has been Co-managing member of Trewstar, LLC, an investment partnership. She is also Chief Executive Officer, since August 2001, and Co-Chairman, since October 1999, of Storetrax.com, an Internet retail real estate service company. Her previous experience includes 12 years in investment banking, specializing in real estate, with Goldman Sachs & Co. Ms. Stewart is also a Director of General Growth Properties Inc. and CarMax, Inc. She has served as a public company director for more than 15 years, participated in implementation of Sarbanes-Oxley programs at three companies, and in implementation of enterprise risk management programs at two companies. Ms. Stewart's varied experience in finance and investment management make her a valued member of Avatar's Board and its Audit and Nominating and Corporate Governance Committees.

**INFORMATION REGARDING THE BOARD OF DIRECTORS
AND ITS COMMITTEES**

Certain Committees of the Board

To assist it in carrying out its duties, the Board has established various committees. Current committees and current members thereof are as follows:

Executive Committee	Audit Committee	Nominating and Corporate Governance Committee	Compensation Committee
Gerald D. Kelfer ⁽¹⁾⁽²⁾	Joel M. Simon ⁽¹⁾	Milton Dresner ⁽¹⁾	Kenneth T. Rosen ⁽¹⁾
Joshua Nash	Roger W. Einiger	Paul D. Barnett	Milton Dresner
Roger W. Einiger	Kenneth T. Rosen	Kenneth T. Rosen	Roger W. Einiger
	Beth A. Stewart	Beth A. Stewart	

(1) Chairman

(2) Officer of Avatar

Executive Committee

The Executive Committee of the Board has authority to exercise most powers of the full Board in connection with matters which arise during the intervals between meetings of the Board. The Executive Committee met twice during 2009.

Audit Committee

The Audit Committee assists the Board in fulfilling its responsibility to oversee management regarding: (i) the conduct and integrity of Avatar's financial reporting; (ii) Avatar's systems of internal accounting and financial and disclosure controls; (iii) the qualifications, engagement, compensation, independence and performance of the independent auditors, their conduct of the annual audit and their engagement for any other services; (iv) Avatar's legal and regulatory compliance; (v) the application of Avatar's related person transaction policy; (vi) codes of business conduct and ethics as established by management and the Board; and (vii) the preparation of the Audit Committee Report for inclusion in the annual proxy statement. The Committee may also perform such other tasks as are assigned to it from time to time by the Board. The Committee has the authority to obtain advice and assistance from, and receive adequate resources and funding from Avatar for, outside counsel, independent auditors or other advisors. The Committee met six times during the fiscal year ended December 31, 2009. The Committee was established in

accordance with Section 3(a)(58)(A) of the Securities Exchange Act of 1934, as amended, and is governed by a written charter approved by the Board. The charter is available on Avatar's website at www.avatarholdings.com.

All members of the Committee have been determined to be independent (see Director Independence). The Board has also determined that all members of the Committee are financially literate under

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Nasdaq's listing standards and Joel M. Simon is the Committee's audit committee financial expert, as defined in the rules of the SEC and for purposes of Nasdaq's listing standards.

Audit Committee Report

The following is the report of Avatar's Audit Committee with respect to Avatar's audited financial statements for the fiscal year ended December 31, 2009:

The Committee has reviewed and discussed Avatar's audited financial statements with management.

The Committee has discussed with Ernst & Young LLP, Avatar's independent auditors, the matters required to be discussed by Statement on Auditing Standards No. 61, as amended (AICPA, Professional Standards, Vol. 1, AU Section 380), as adopted by the Public Company Accounting Oversight Board in Rule 3200T.

The Committee has also received the written disclosures and the letter from Ernst & Young LLP required by applicable requirements of the Public Company Accounting Oversight Board regarding the independent accountant's communications with the Committee concerning independence, and has discussed with Ernst & Young LLP their independence.

Based on the review and discussions referred to above, the Committee recommended to Avatar's Board of Directors that its audited financial statements be included in Avatar's Annual Report on Form 10-K for the fiscal year ended December 31, 2009 for filing with the Securities and Exchange Commission.

March 10, 2010
AUDIT COMMITTEE

Joel M. Simon, Chairman
Roger W. Einiger
Kenneth T. Rosen
Beth A. Stewart

Nominating and Corporate Governance Committee

The Nominating and Corporate Governance Committee assists the Board in: (i) identifying, screening and reviewing individuals to serve as directors and recommending candidates for nomination for election at the annual meeting of stockholders or to fill Board vacancies; (ii) overseeing Avatar's policies and procedures for receipt of stockholder suggestions regarding composition of the Board and recommendations of candidates for nomination; (iii) overseeing implementation of Avatar's Corporate Governance Guidelines and Principles; and (iv) reviewing Avatar's overall corporate governance and recommending changes when necessary or desirable. The Committee may also perform such additional tasks as assigned to it by the Board. The Committee has the authority to obtain advice and assistance from, and receive adequate resources and funding from Avatar for, outside counsel, consultants and other advisors. The Committee met twice during the fiscal year ended December 31, 2009.

All members of the Committee have been determined to be independent (see *Director Independence*). The Committee is governed by a written charter approved by the Board. The Charter is available on Avatar's website at www.avatarholdings.com.

The Committee assesses the appropriate size of the Board, evaluates the membership, and identifies and reviews director nominee candidates. The Committee considers candidates for Board membership based upon various criteria,

including their business and professional skills and experience, personal integrity and judgment, commitment to representing the long-term interests of stockholders and availability to participate in Board activities. The Committee will consider candidates suggested by its members, other Board members, management and stockholders, and may, if necessary or appropriate, utilize the services of a professional search firm. In order to be considered, a recommendation from a stockholder must include the stockholder's name and contact information, the candidate's name and contact information, a

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brief description of the candidate's background and qualifications and a statement by the candidate that he or she is willing and able to serve on the Board. The Committee may also require candidates to provide such other information as it may request.

The Committee reviews periodically and recommends to the Board for approval any changes in the compensation of non-employee directors. The Committee has received advice from the Company's counsel relative to the structure and terms of director compensation. Any equity compensation awards for non-employee directors are administered by the Committee under Avatar's Incentive Plan.

Avatar's By-Laws establish advance notice procedures with respect to nominations for election of directors for an annual meeting (see [Stockholders' Proposals and Nominations of Board Members](#)).

Compensation Committee

The Compensation Committee assists the Board in overseeing management compensation policies and practices, including the determination and approval of (i) the compensation of the CEO and the Company's other executive officers and (ii) incentive compensation policies and programs and the exercise of discretion in the administration of such programs. It also reviews and discusses with Avatar's management proposed Compensation Discussion and Analysis disclosure and determines whether to recommend it to the Board for inclusion in Avatar's proxy statement and Form 10-K. The recommendation is described in a Compensation Committee Report included in the proxy statement. The Committee may perform such other tasks as assigned to it by the Board. The Committee may delegate any of its responsibilities to a subcommittee comprised solely of one or more of its members so long as such delegation is consistent with law and applicable rules of the SEC and Nasdaq. The Committee has the authority to obtain advice and assistance from the Committee's outside counsel, compensation consultants and other advisors with funding from the Company. The Committee met eight times during the fiscal year ended December 31, 2009.

The Company generally follows the following processes and procedures in connection with the consideration and determination of the compensation of the executive officers. Ultimately, the compensation of the executive officers is determined by the Compensation Committee. The Company's processes and procedures are not formalized but adapt to the particular arrangement being considered. For example, a routine discretionary annual cash bonus for a relatively small amount is handled differently than a multi-year employment agreement with potentially significant performance target awards. In the case of non-routine arrangements for executive officers, including the CEO, the CEO may discuss the proposed arrangements with the Company's outside counsel and with one or more directors for their advice and other input, on a preliminary basis. After the arrangements are further refined and term sheets prepared, the Committee meets to discuss them with the CEO. During part of the meeting, the CEO and any other employees, if present, are excused so that the Committee may deliberate among themselves. At the Committee's request, the Company's outside counsel is often asked for legal advice and other guidance. The Committee may request financial and other data from the Company and review strategic and business plans with the CEO. The chairman of the Committee or the Company's outside counsel may negotiate terms with the CEO or other executive officers (and sometimes their respective counsel). This process varies depending on the circumstances, but the Committee meets periodically to be updated on progress, receive revised term sheets and other data, engage in discussion and provide further direction. The Committee may also consult with persons with specialized knowledge, such as the Company's Chief Financial Officer for accounting matters and the outside counsel's tax specialists. Ultimately, the Committee meets to make the final determination to approve the arrangements, usually after reviewing the related documentation substantially in final form. During the process and at its conclusion, the Committee also provides periodic reports of its activities to the full Board.

After discussion with the Company executives, and further to the CEO's recommendation, the Committee acts to approve routine compensation arrangements, including the award of discretionary cash bonuses.

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Certain awards to executive officers, such as the Earnings Participation Awards, have performance goals based on financial measures, which require the Committee to determine whether such goals have been achieved from time to time, usually quarterly or annually. As part of this process, the Committee usually receives a report of Avatar's independent auditors to confirm that the calculations prepared by the Company's management are made in accordance with the terms of the awards.

During the past several years, compensation consultants were not involved in determining or recommending the amount or form of executive and director compensation. During 2006, Avatar engaged Frederick W. Cook & Co., Inc., at the request of management on the recommendation of the Company's outside counsel, to analyze the impact of the golden parachute provisions of the Internal Revenue Code (that is, Sections 280G and 4999) on existing arrangements with executives and under several hypothetical scenarios. Specifically, the consultant performed calculations under hypothetical scenarios and assumptions suggested by management with the advice of the Company's outside counsel.

The Committee is governed by a written charter approved by the Board. The charter sets out in greater detail the specific responsibilities of the Committee. A current copy of the charter is available on Avatar's website at www.avatarholdings.com.

Compensation Committee Interlocks and Insider Participation

The members of the Compensation Committee during fiscal 2009 were, and currently are Messrs. Dresner, Einiger and Rosen. None of them has been an executive officer or employee of Avatar, and none were party to any related person transaction with Avatar that would require disclosure in this Proxy Statement.

Directors' Compensation

Compensation of each non-employee director of Avatar is \$52,500 per annum. Each non-employee member of the Executive Committee of Avatar receives a retainer of \$2,000 per annum. Members and the Chairman of the Audit Committee receive additional compensation of \$12,000 and \$14,000 per annum, respectively. Members and the Chairman of the Nominating and Corporate Governance Committee receive additional compensation of \$4,000 and \$7,000 per annum, respectively. Members and the Chairman of the Compensation Committee receive additional compensation of \$4,000 and \$5,000 per annum, respectively.

The Nominating and Corporate Governance Committee adopted a deferral program applicable to non-employee directors. Under the deferral program, non-management directors may elect to defer up to 50% of annual retainer fees, committee fees and/or chairperson fees, for which the director is credited with a number of Stock Units based upon the closing price of the Common Stock on the due date of each payment. The Stock Units become distributable as shares of Common Stock upon the earlier of a date designated by the individual director or the date of the individual's separation from service as a director.

The Nominating and Corporate Governance Committee also determined to grant annual awards of RSUs to all non-employee directors. On May 28, 2009, each non-employee director was awarded 840 RSUs for service as a director for the term beginning May 28, 2009. The RSUs will vest and be converted into an equivalent number of shares of Common Stock upon the earlier of the first anniversary of the date of the award and the date immediately preceding the date of Avatar's 2010 Annual Meeting of Stockholders, provided that the non-employee director is a member of the Board on such vesting date. The RSUs will vest immediately upon the death or disability of the non-employee director or upon a change in control of the Company. If the non-employee director ceases to be a member of the Board for any other reason, the RSUs will be forfeited.

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The following table sets forth the retainer, other cash fees and equity compensation received during the fiscal year ended December 31, 2009, by non-management directors.

Name	Fees Earned or Paid in Cash ⁽¹⁾	Stock Awards ⁽²⁾⁽³⁾	All Other Compensation	Total
Paul D. Barnett	\$ 56,500	\$ 14,650		\$ 71,150
Milton Dresner	63,500	14,650		78,150
Roger W. Einiger	69,667	14,650		84,317
Joshua Nash	54,500	14,650		69,150
Kenneth T. Rosen	73,500	14,650		88,150
Joel M. Simon	66,500	14,650		81,150
Beth A. Stewart	68,500	14,650		83,150

(1) Includes respective amounts of \$28,250, \$-0-, \$34,833, \$27,250, \$-0-, \$-0-, and \$-0- which were deferred during 2009 and represented by Stock Units under the deferral program adopted in June 2005.

(2) Represents for each director the aggregate grant date fair value of 840 RSUs. The grant date fair value of these RSUs is \$17.44 per share, calculated in accordance with FASB ASC Topic 718 by using the closing price of the Common Stock on May 28, 2009, the date of grant.

Directors Attendance

In fiscal year 2009, all of the incumbent directors attended 75% or more of the aggregate of their respective Board and committee meetings.

Directors Attendance at Annual Meetings of Stockholders

The Board encourages each member of the Board to attend each Annual Meeting of Stockholders, but recognizes that unavoidable circumstances may prevent attendance. All members of the Board who were standing for election or reelection attended the 2009 Annual Meeting of Stockholders.

Communication with the Board of Directors

A stockholder who wishes to communicate with the Board, or specific individual directors, may direct written communication addressed to the Board or such director or directors in care of the Corporate Secretary, Avatar Holdings Inc., 201 Alhambra Circle, Coral Gables, Florida 33134.

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EXECUTIVE COMPENSATION

Compensation Discussion and Analysis

Overview

In this section of our Proxy Statement we discuss, among other things, the overall objectives of our executive compensation programs and the material elements of compensation awarded to, earned by, or paid to our Named Executive Officers (or NEOs). We identify the Named Executive Officers in accordance with SEC rules and include each person who in 2009 served as our principal executive officer and our principal financial officer, as well as our three other most highly compensated executive officers in 2009. For 2009, our Named Executive Officers were Gerald D. Kelfer, President and CEO; Randy L. Kotler, Executive Vice President, CFO and Treasurer; Jonathan Fels, President of our subsidiary, Avatar Properties Inc.; Michael Levy, Executive Vice President and COO of Avatar Properties Inc.; and Patricia K. Fletcher, Executive Vice President and General Counsel.

Following this Compensation Discussion and Analysis (CD&A), we present detailed tabular and narrative information concerning the compensation of each of the Named Executive Officers and their employment and other agreements. This detailed information should be read in conjunction with the CD&A.

The compensation of our Named Executive Officers should be understood within the context of our business. We are engaged in the business of real estate operations in Florida and Arizona. Our residential community development activities include the development of active adult and primary residential communities. We also engage in a variety of other real estate related activities, such as the operation of amenities, the sale for third-party development of commercial and industrial land and the operation of a title insurance agency. Most of our development projects take many years to conceive, permit, develop and sell. Thus, it may take an extended period of time before a project can be viewed as profitable or not. Most of the compensation amounts in the Summary Compensation Table (which follows the CD&A) relate to arrangements with our NEOs that were established several years ago (with the exception of arrangements with Mr. Kotler and Ms. Fletcher, who joined the Company in 2007). In 2006, Avatar achieved record results for both revenue and net profit, and our stock price reached new highs. However, our industry is highly cyclical and is affected by general economic conditions and other factors beyond our control. Thus, in 2007, our results reflected the continued deterioration of conditions in the credit markets and in the Florida and Arizona housing markets. Although our results significantly declined in 2007, we did continue to operate at a net profit for that year, and until the summer of 2007, our stock continued to trade at prices near or at new highs. In 2008, the deterioration in credit and housing markets accelerated, bringing development of our active adult and primary residential communities to their lowest level in several years. The prevailing adverse economic conditions continued to affect our business throughout 2009 and contributed to our net loss and lower stock price levels in 2009.

The compensation of all of our executive officers, including NEOs, is overseen and determined by the Compensation Committee of our Board of Directors. Each member of the Committee is independent in accordance with applicable rules of The Nasdaq Stock Market. The Committee works with the CEO to establish the Company's executive compensation philosophy, policies and programs. For more information about the Committee's responsibilities and processes and the involvement of the CEO, see Information Regarding the Board of Directors and Its Committees Compensation Committee above.

Objectives of Our Compensation Programs and What They Are Designed To Reward

Our compensation programs are intended to attract and retain executives, to motivate and reward them for achieving the Company's long-term goals, and to align their interests with those of our stockholders.

In order to retain the services of our executives, our compensation practices should be competitive with those of other employers with whom we compete for talent.

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Avatar pays for performance. This means that our compensation program is designed to recognize an executive's contribution that has led to the attainment of corporate goals.

Our compensation program is designed to motivate executives to achieve results in a manner that builds long-term stockholder value. An equity component of total compensation is included to align the interests of the executives with the interests of our stockholders.

How The Various Kinds of Compensation Are Determined and Allocated to Form A Complete Package

The objectives described above are supported by the three primary elements of our compensation program for NEOs: base salaries, annual cash bonuses and performance-based cash and equity awards. The limited perquisites provided to our NEOs are also available to many of our other employees.

While there are several elements to the compensation program, they are evaluated as a whole by our Compensation Committee in making its determinations. We do not have any specific policies or parameters for allocating between cash and non-cash compensation or with respect to the duration of compensation arrangements. In general, the Compensation Committee has a balanced approach, taking into account our business plan and the responsibilities of the particular executive.

Salaries and Bonuses

Salaries are a necessary part of any compensation program and paying reasonable salaries is an important aspect of attracting and retaining qualified executives. Annual cash bonuses further the objective of rewarding individual contributions and the achievement of corporate and project goals. In setting salaries and bonuses, we have not established any specific target levels based on peer group analyses or benchmarking studies. However, we believe that our market for executive talent is competitive, and we take this into account in the establishment of a total compensation package.

Except for Messrs. Kelfer, Fels, Levy and Kotler, bonus amounts are usually discretionary and determined subjectively. Factors used in determining the amounts often vary widely from person to person, since they principally relate to individual performance.

The base salary and annual bonus amounts for Messrs. Kelfer, Kotler, Fels and Levy and Ms. Fletcher were established in connection with the negotiation of their respective employment agreements. Each agreement specifies a salary and a minimum annual cash bonus amount. Mr. Kelfer's salary and bonus have been unchanged since 2000. The salaries of Messrs. Fels and Levy have been unchanged since 2003, and their bonuses have been unchanged since 2005, the last time their compensation arrangements were significantly modified. The salaries of Mr. Kotler and Ms. Fletcher, each hired in 2007, and the minimum bonus for Mr. Kotler, were unchanged for 2008. For 2009, as part of its ongoing program to reduce expenses, the Company reduced the compensation of most of its employees whose annual compensation exceeds \$30,000. Reductions range from 4% to 10%, depending upon the level of compensation, and include those employees with written employment agreements who have agreed to such reductions. The annual base salaries of Messrs. Kelfer, Fels and Levy were reduced from \$500,000 to \$450,000 and Mr. Kotler's base salary was reduced from \$350,000 to \$315,000. In addition, the annual bonuses, payable to Messrs. Kelfer, Fels and Levy in December 2009, of \$500,000, \$400,000 and \$400,000, respectively, were reduced by 10% on the amounts to be accrued from April 13 through December 31, 2009; and bonuses of \$465,400, \$372,320 and \$372,320, respectively, were paid. Further with respect to Mr. Fels, in view of the continuing adverse effects of the economic downturn on the Company's homebuilding operations, on December 29, 2009, the Company entered into a Separation and Release Agreement with Mr. Fels. Mr. Fels resigned as of December 31, 2009, at which time he received \$450,000 as cash

compensation equal to 50% of the amount contractually payable to him for the calendar year 2010. For further description of the agreements with Mr. Fels, see Employment and Other Agreements Agreements with Jonathan Fels below.

In establishing the NEOs' respective aggregate salary and bonus, we considered the potentially adverse effects of Section 162(m) of the Internal Revenue Code. See Tax and Accounting Considerations below in this CD&A.

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Table of Contents*Performance-based Cash and Equity Awards*

A significant component of our compensation program for most NEOs is their opportunity to receive performance-based cash or equity awards. We use these awards to motivate executives toward achieving long-term corporate goals that are consistent with the Company's business plans. We also use them both to align the executives' interests to those of our stockholders and to retain our executives. Like salary and bonus, we have not established any specific target levels for incentive compensation based on peer group analyses or benchmarking studies. However, we aim to set reasonable awards within the framework of a total compensation package. The specific types of awards (for example, cash or equity) and performance objectives (for example, stock price or gross profit) and periods (for example, annual or multi-year) are tailored for the recipient. In determining amounts of the awards, consideration may be given to numerous factors, including anticipated future results of operations and the executive's anticipated contributions toward achieving such results. Amounts may also be based upon the achievement of specified stock prices and the executive's continued employment through the vesting period. The Compensation Committee has not established a formal policy as to when grants are made. Awards are usually granted at a meeting of the Committee, and the members of the Committee may have material non-public information concerning the Company at that time.

Kelfer, Fels and Levy. In recent years, Messrs. Kelfer, Fels and Levy have been awarded relatively similar performance-based awards, with Mr. Kelfer, our CEO, generally being eligible to receive a larger amount than Messrs. Fels and Levy, consistent with his greater overall responsibilities. These awards generally consist of earnings participation awards and restricted stock unit (RSU) awards. No new awards were made to Messrs. Kelfer, Fels and Levy since 2005.

Earnings participation awards relate to the Company's financial performance over a period of time, generally several years. The award may pay out in cash or shares of stock depending on its specific terms. In the recent past, the awards generally gave the executive the opportunity to receive an annual cash payment based on a percentage of the Company's actual gross profit (as defined) each year over preestablished levels. In addition, the executive may also receive an additional amount based on a percentage of the Company's actual cumulative gross profit over a preestablished level during the performance period. Messrs. Kelfer, Fels and Levy received an award in 2003 covering (after an amendment in 2005) the period 2003-2007, and another award in 2005 covering the 2008-2010 performance period. In establishing the parameters of these awards, including the threshold gross profit levels, the Compensation Committee considered, among other things, the Company's long-term business plans. A gross profit measure, essentially the Company's net income plus taxes and certain other adjustments, was selected because it is a fundamental indication of corporate performance and relates to the entire Company, in which they have a significant role. These awards also include annual and cumulative caps that limit the amount that can be paid to the executives. Further, in the event of a restatement of the Company's financial statements, the awards give us the right to recover amounts paid to the executives in excess of that to which they were entitled (after giving effect to the restatement). See *Employment and Other Agreements* for a description of these awards to Messrs. Kelfer, Fels and Levy, including the preestablished gross profit levels.

An RSU's value is directly related to the price of our Common Stock. Prior to the executive receiving any shares of stock under an RSU award, generally two conditions must be satisfied. A stock price hurdle must be attained, and thereafter, the grant must vest on completion of the employment obligations. The hurdle prices are set at significant premiums to the then market price of our Common Stock, and the vesting date is usually several years following the date of award. For example, in the case of the three RSU awards made to Messrs. Kelfer, Fels and Levy in 2005, the hurdle prices \$65.00, \$72.50 and \$80.00 per share reflect an increase in Avatar's stock price of approximately 35%, 52% and 68%, respectively, over the closing price of the Common Stock on the date the Compensation Committee approved the terms of the RSU agreements. The awards generally do not vest until the expiration of the executive's employment contract (in 2010 for Mr. Levy and in 2011 for Mr. Kelfer), provided in each case he is still employed by Avatar on that date (except under certain limited circumstances). (See *Salaries and Bonuses* above with respect to

Mr. Fels.) As a result of the performance of the Company's stock in 2006 and early 2007, all

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remaining hurdle price conditions were satisfied. (See RSUs and Restricted Common Stock Outstanding at 2009 Fiscal Year-End below.)

Kotler and Fletcher. Consistent with our compensation objectives described above, upon commencing employment in 2007, Mr. Kotler and Ms. Fletcher were each given an opportunity to receive performance-conditioned RSUs. Mr. Kotler received a total of 7,500 RSUs, in three 2,500 unit tranches with the hurdle prices of \$80.86, \$84.71 and \$88.56 per share, respectively reflecting an increase in Avatar's stock price of approximately 5%, 10% and 15%, respectively, over the closing price of the Common Stock on the date the Compensation Committee approved the terms of the RSU agreements. Ms. Fletcher received 18,900 RSUs with a hurdle price of \$72.50 per share reflecting an increase in Avatar's stock price of approximately 14% over the closing price of the Common Stock on the date the Compensation Committee approved the terms of the RSU agreement. Similar to the RSUs awarded in the past to Messrs. Kelfer, Fels and Levy, the awards generally do not vest until the expiration of the executive's employment contract (in 2009 for Ms. Fletcher and in 2010 for Mr. Kotler), provided in each case the executive is still employed by Avatar on that date (except under certain limited circumstances). As a result of the performance of the Company's stock in 2007, the hurdle price condition for Ms. Fletcher's RSU award was satisfied.

Conversion of Certain Unvested RSUs to Restricted Stock

On December 22, 2008, each NEO's outstanding unvested RSUs for which the applicable hurdle price condition had been satisfied were, in effect, converted into restricted shares of Common Stock. On such date, each NEO made an Internal Revenue Code Section 83(b) election (the Section 83(b) election) with respect to all such shares of restricted stock, Avatar agreed to vest a number of shares of restricted stock having a value approximately equal to the tax withholding amount required as a result of the Section 83(b) election, at the minimum statutory withholding rates applicable to the employee, and such vested shares were reacquired by Avatar in satisfaction of the NEO's tax withholding. The terms, conditions and restrictions of the restricted stock, including the vesting and forfeiture provisions are otherwise substantially the same as those that were applicable to the RSUs prior to conversion except that each NEO, as an owner of this restricted stock, generally has the rights of an Avatar common stockholder, including voting and dividend rights (except that dividends on unvested shares of restricted stock generally are forfeited unless such shares ultimately vest). Restricted shares of Common Stock issued to Mr. Fels and Ms. Fletcher vested as of December 31, 2009. (See Option Exercises and Stock Vested in 2009 below.) The conversion of RSUs to restricted stock and the partial accelerated vesting for tax withholding created a substantially cash neutral transaction whereby, without requiring any current cash outlay by an NEO, such NEO has an opportunity to receive favorable capital gains tax treatment in the future (upon sale of restricted stock following vesting).

Tax and Accounting Considerations

The Company considers the tax consequences of all elements of its compensation program on both the executives and the Company. In particular, we consider the effects of Section 162(m) as well as Sections 280G and 4999 of the Internal Revenue Code. Section 162(m) of the Internal Revenue Code could potentially limit the federal income tax deductions to be taken by the Company for compensation paid to the CEO and to each of the other three most highly compensated NEOs (other than the CFO). The general rule is that annual compensation paid to any of these executives will be deductible by Avatar only to the extent that it does not exceed \$1,000,000 (per person) or qualifies as performance-based compensation. Generally, we intend that compensation paid to executives will comply with requirements of Section 162(m) so that Avatar will receive a full federal tax deduction. For example, we have stockholder-approved incentive plans pursuant to which the Compensation Committee grants awards that are intended to qualify as performance-based under Section 162(m). However, we may decide to make non-deductible payments or awards when circumstances warrant.

In the event of a change of control of the Company, Section 280G could potentially limit the federal tax deductions to be taken for certain compensation payments to an executive who could be subject to

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additional taxes (Section 4999). These provisions of the tax code are sometimes referred to as the golden parachute provisions. In general, if the total amount of payments to an individual that are contingent upon a change of control of Avatar (within the meaning of Section 280G), including payments under our incentive plans that vest upon a change in control, equals or exceeds three times the executive's base amount (generally, the individual's average annual compensation for the five calendar years preceding the change of control), then, subject to certain exceptions, the portion of such payments in excess of the base amount may be treated as parachute payments under Section 280G. A portion of such payments would not be deductible by Avatar, and the executive would be subject to a 20% excise tax on such portion of the payments. In 2006 we evaluated the potential effects of the golden parachute provisions and revised our compensation arrangements with Messrs. Kelfer, Fels and Levy in order to reduce the likelihood of lost deductions and the imposition of excise taxes should a change of control transaction occur. However, there can be no assurance that payments actually received by each of the executives in connection with a change in control transaction, if one were to occur, will be deductible by Avatar or will not be subject to an excise tax. The ultimate determination would depend on various factors at the time a change in control transaction occurs, including transaction price, the actual base amount and other variables that cannot presently be predicted.

The Company accounts for stock-based compensation in accordance with the requirements of ASC Topic 718 (ASC 718), which for example, requires stock options to be expensed. The adoption of ASC 718 has not affected our compensation program for NEOs.

Compensation Committee Report

The Compensation Committee of the Board of Directors of Avatar has reviewed and discussed the foregoing Compensation Discussion and Analysis with Avatar's management. Based on such review and discussion, the Committee recommended to the Board that the Compensation Discussion and Analysis be included in this Proxy Statement and Avatar's Annual Report on Form 10-K for the fiscal year ended December 31, 2009.

April 20, 2010

COMPENSATION COMMITTEE
Kenneth T. Rosen, Chairman
Milton Dresner
Roger W. Einiger

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Summary Compensation Table

The following table presents 2009, 2008 and 2007 compensation information regarding the Company's Chief Executive Officer, Chief Financial Officer and each of the three other most highly compensated executive officers on December 31, 2009 (the "Named Executive Officers" or "NEOs").

Name and Principal Occupation	Year	Salary	Bonus	Non-Equity Incentive		All Other Compensation ⁽⁸⁾	Total
				Stock Awards	Option Plan Awards		
Gerald D. Kelfer , President, CEO &	2009	\$ 473,077 ⁽¹⁾⁽²⁾	\$ 465,400 ⁽¹⁾⁽²⁾	\$	\$	\$ 4,166	\$ 942,643
	2008	500,000	500,000				