

AVATAR HOLDINGS INC

Form 10-Q/A

May 21, 2004

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

FORM 10-Q/A

AMENDMENT NO. 1

þ Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 For the quarterly period ended March 31, 2004

or

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

Commission file number 0-7616

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

Avatar Holdings Inc.

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

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes No

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Exchange Act).

Yes No

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date: 8,262,386 shares of Avatar's common stock (\$1.00 par value) were outstanding as of April 30, 2004.

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EXPLANATORY NOTE

This amendment to the Quarterly Report on Form 10-Q of Avatar Holdings Inc. for the quarter ended March 31, 2004, that was originally filed on May 6, 2004, is being filed to (1) change the presentation of the Consolidated Statements of Operations, reclassifying results from the Ocean Palms unconsolidated joint venture from Revenues to Equity earnings (loss) from unconsolidated joint venture and (2) expand the table in the note titled Stock-Based Compensation in the notes to consolidated financial statements. In addition, in connection with the filing of this amendment, Avatar is including as exhibits certain currently dated certifications of Avatar's Chief Executive Officer and Chief Financial Officer.

Table of Contents**PART I FINANCIAL INFORMATION****ITEM 1. FINANCIAL STATEMENTS****AVATAR HOLDINGS INC. AND SUBSIDIARIES**Consolidated Balance Sheets
(Dollars in thousands)

	(Unaudited)	
	March 31	December 31
	2004	2003
	<hr/>	<hr/>
Assets		
Cash and cash equivalents	\$ 93,042	\$ 24,600
Restricted cash	5,338	2,191
Receivables, net	12,399	14,131
Land and other inventories	228,891	212,788
Land inventory not owned	23,018	22,750
Property, plant and equipment, net	50,064	53,542
Investment in unconsolidated joint venture	22,060	19,018
Other assets	18,948	5,923
Deferred income taxes	8,405	7,776
	<hr/>	<hr/>
Total Assets	\$462,165	\$362,719
	<hr/>	<hr/>
Liabilities and Stockholders' Equity		
Liabilities		
Notes, mortgage notes and other debt:		
Corporate	\$ 120,000	\$
Real estate	8,386	19,771
Obligations related to land inventory not owned	23,018	22,750
Estimated development liability for sold land	17,491	17,794
Accounts payable	6,689	2,801
Accrued and other liabilities	17,602	11,337
Customer deposits	31,690	24,617
Minority interest	8,000	
	<hr/>	<hr/>
Total Liabilities	232,876	99,070
Commitments and Contingencies		
Stockholders' Equity		
Common Stock, par value \$1 per share		

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Authorized: 50,000,000 shares

Issued: 10,544,408 shares at March 31, 2004 10,541,394 shares at
December 31, 2003

Additional paid-in capital

Retained earnings

10,544	10,541
198,636	198,477
84,613	76,229
<u> </u>	<u> </u>

293,793	285,247
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Treasury stock: at cost, 2,293,022 shares at March 31, 2004 at cost,
1,151,622 shares at December 31, 2003

(64,504)	(21,598)
<u> </u>	<u> </u>

Total Stockholders Equity

229,289	263,649
<u> </u>	<u> </u>

Total Liabilities and Stockholders Equity

\$462,165	\$362,719
<u> </u>	<u> </u>

See notes to consolidated financial statements.

Table of Contents**AVATAR HOLDINGS INC. AND SUBSIDIARIES**

Consolidated Statements of Operations
 For the three months ended March 31, 2004 and 2003
 (Unaudited)

(Dollars in thousands except per-share amounts)

	2004	2003
Revenues		
Real estate sales	\$77,020	\$49,317
Deferred gross profit on homesite sales	303	300
Interest income	144	470
Other	849	454
Total revenues	78,316	50,541
Expenses		
Real estate expenses	65,967	42,200
General and administrative expenses	4,439	3,500
Interest expense		873
Other	541	523
Total expenses	70,947	47,096
Equity earnings (loss) from unconsolidated joint venture	3,041	(304)
Income from continuing operations before income taxes	10,410	3,141
Income tax expense	(3,723)	(1,109)
Income from continuing operations after income taxes	6,687	2,032
Discontinued operations:		
Income (loss) from operations of discontinued operations (including gain on disposal of \$2,784 in 2004)	2,737	(16)
Income tax (expense) benefit	(1,040)	6
Income (loss) from discontinued operations	1,697	(10)

Net income	\$ 8,384	\$ 2,022
	<u> </u>	<u> </u>
Basic EPS:		
Income from continuing operations after income taxes	\$ 0.72	\$ 0.23
Income (loss) from discontinued operations	0.18	0.00
	<u> </u>	<u> </u>
Net income	\$ 0.90	\$ 0.23
	<u> </u>	<u> </u>
Diluted EPS:		
Income from continuing operations after income taxes	\$ 0.70	\$ 0.23
Income (loss) from discontinued operations	0.18	0.00
	<u> </u>	<u> </u>
Net income	\$ 0.88	\$ 0.23
	<u> </u>	<u> </u>

See notes to consolidated financial statements.

Table of Contents**AVATAR HOLDINGS INC. AND SUBSIDIARIES**

Consolidated Statements of Cash Flows (Unaudited)
For the three months ended March 31, 2004 and 2003
(Dollars in Thousands)

	<u>2004</u>	<u>2003</u>
OPERATING ACTIVITIES		
Net income	\$ 8,384	\$ 2,022
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	1,149	905
Amortization of unearned restricted stock	409	344
Income (loss) from discontinued operations	(1,697)	10
Deferred gross profit	(303)	(300)
Equity (earnings) loss from unconsolidated joint venture	(3,041)	304
Deferred income taxes	(629)	(796)
Changes in operating assets and liabilities:		
Restricted cash	(3,147)	(183)
Receivables, net	2,035	508
Land and other inventories	(4,313)	(1,296)
Other assets	(8,561)	(1,653)
Customer deposits	7,073	1,580
Accounts payable and accrued and other liabilities	7,890	4,336
	<u>5,249</u>	<u>5,781</u>
NET CASH PROVIDED BY OPERATING ACTIVITIES		
INVESTING ACTIVITIES		
Investment in property, plant and equipment	(655)	(339)
Investment in unconsolidated joint venture		(12,052)
Net proceeds from sale of Harbor Islands marina	6,664	
	<u>6,009</u>	<u>(12,391)</u>
NET CASH PROVIDED BY (USED IN) INVESTING ACTIVITIES		
FINANCING ACTIVITIES		
Proceeds from issuance of 4.50% Notes	120,000	
Payment of issuance costs from 4.50% Notes	(3,600)	
Principal payments of real estate borrowings	(16,385)	
Repurchase of 7% Notes		(7,585)
Purchase of treasury stock	(42,906)	(5,225)
Proceeds from exercise of stock options	75	
	<u>57,184</u>	<u>(12,810)</u>
NET CASH PROVIDED BY (USED IN) FINANCING ACTIVITIES		

	<u> </u>	<u> </u>
INCREASE (DECREASE) IN CASH	68,442	(19,420)
Cash and cash equivalents at beginning of period	<u>24,600</u>	<u>118,839</u>
CASH AND CASH EQUIVALENTS AT END OF PERIOD	<u>\$ 93,042</u>	<u>\$ 99,419</u>

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AVATAR HOLDINGS INC. AND SUBSIDIARIES
 Consolidated Statements of Cash Flows (Unaudited) continued
 For the three months ended March 31, 2004 and 2003
 (Dollars in Thousands)

	2004	2003
SUPPLEMENTAL DISCLOSURES OF NON-CASH ACTIVITIES		
Land and other inventories	\$ 13,000	\$
Notes, mortgage notes and other debt:		
Real estate	\$ 5,000	\$
Minority interest	\$ 8,000	\$
 SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION:		
Cash paid during the period for:		
Interest (net of amount capitalized of \$310 and \$1,135 in 2004 and 2003, respectively)	(\$234)	\$(1,135)
	\$	\$ 1,900
Income taxes	\$	\$ 1,900

See notes to consolidated financial statements.

Table of Contents**AVATAR HOLDINGS INC. AND SUBSIDIARIES****Notes to Consolidated Financial Statements (Unaudited)****March 31, 2004****(Dollars in thousands except per share data)****Basis of Statement Presentation and Summary of Significant Accounting Policies**

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

The consolidated balance sheets as of March 31, 2004 and December 31, 2003, and the related consolidated statements of operations for the three months ended March 31, 2004 and 2003 and the consolidated statements of cash flows for the three months ended March 31, 2004 and 2003 have been prepared in accordance with accounting principles generally accepted in the United States for interim financial information, the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all of the information and footnotes required by accounting principles generally accepted in the United States for complete financial statement presentation. In the opinion of management, all adjustments necessary for a fair presentation of such financial statements have been included. Such adjustments consisted only of normal recurring items. Interim results are not necessarily indicative of results for a full year.

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

For a complete description of Avatar's other accounting policies, refer to Avatar Holdings Inc.'s 2003 Annual Report on Form 10-K and the notes to Avatar's consolidated financial statements included therein.

Reclassifications

Certain 2003 financial statement items have been reclassified to conform to the 2004 presentation.

Land and Other Inventories

Inventories consist of the following:

	March 31, 2004	December 31, 2003
	<hr/>	<hr/>
Land developed and in process of development	\$142,131	\$125,226
Land held for future development or sale	32,656	32,656
Dwelling units completed or under construction	53,664	54,162
Other	440	744
	<hr/>	<hr/>
	\$228,891	\$212,788
	<hr/>	<hr/>

Table of Contents**Notes to Consolidated Financial Statements (dollars in thousands except per share data) (Unaudited)
continued****Warranty Costs**

Warranty reserves for houses are established to cover potential costs for materials and labor with regard to warranty-type claims to be incurred subsequent to the closing of a house. Reserves are determined based on historical data and current factors. Avatar may have recourse against the subcontractors for claims relating to workmanship and materials. Warranty reserves are included in Accrued and Other Liabilities in the consolidated balance sheets.

During the three months ended March 31, 2004 changes in the warranty accrual consisted of the following:

	2004
Accrued warranty reserve as of January 1	\$ 977
Estimated warranty expense	409
Amounts charged against warranty reserve	(294)
	<hr/>
Accrued warranty reserve as of March 31	\$1,092
	<hr/>

Notes, Mortgage Notes and Other Debt

On March 30, 2004, Avatar issued \$120,000 aggregate principal amount of 4.50% Convertible Senior Notes due 2024 (the 4.50% Notes) in a private, unregistered offering sold only to qualified institutional buyers, in accordance with Rule 144A under the Securities Act of 1933, as amended, and outside the United States to non-U.S. persons in accordance with Regulation S under the Securities Act of 1933, as amended. Within 90 days from the date of issue, Avatar will, for the benefit of the 4.50% Note holders, file a shelf registration statement covering resales of the 4.50% Notes and the shares of Avatar's common stock issuable upon the conversion of the 4.50% Notes. The 4.50% Notes are senior, unsecured obligations and rank equal in right of payment to all of Avatar's existing and future unsecured and senior indebtedness. However, the 4.50% Notes are effectively subordinated to all of Avatar's existing and future secured debt to the extent of the collateral securing such indebtedness, and to all existing and future liabilities of subsidiaries of Avatar. Each \$1 in principal amount of the 4.50% Notes is convertible, at the option of the holder, at a conversion price of \$52.63, or 19.0006 shares of Avatar's common stock, upon the satisfaction of certain conditions and contingencies. In conjunction with the offering, Avatar used approximately \$42,906 of the net proceeds from the offering to purchase 1,141,400 shares of its common stock in privately negotiated transactions at a price of \$37.59 per share. Avatar intends to use the balance of the net proceeds from the offering for general corporate purposes.

During the first quarter of 2004, Avatar made payments of \$16,337 under the \$100,000 Secured Revolving Line of Credit Facility (the Long-Term Facility). As of March 31, 2004, approximately \$99,400 was available for borrowings under the Long-Term Facility, net of approximately \$600 outstanding letters of credit.

During the third and fourth quarters of 2003, Avatar redeemed the 7% Convertible Subordinated Notes due 2005 (the 7% Notes). For a complete description of these transactions, refer to Avatar Holdings Inc.'s 2003 Annual Report on Form 10-K and the notes to Avatar's consolidated financial statements included therein.

Table of Contents**Notes to Consolidated Financial Statements (dollars in thousands except per share data) (Unaudited)
continued****Earnings Per Share**

Avatar presents earnings per share in accordance with SFAS No. 128, *Earnings Per Share*. Basic earnings per share is computed by dividing earnings available to common shareholders by the weighted average number of common shares outstanding for the period. Diluted earnings per share reflects the potential dilution that could occur if securities or other contracts to issue common stock were exercised or converted into common stock or resulted in the issuance of common stock that then shared in the earnings of Avatar. In accordance with SFAS No. 128, the computation of diluted earnings per share for the three months ended March 31, 2004 did not assume the conversion of the 4.50% Notes since certain conditions and contingencies were not met as of March 31, 2004 that would deem them convertible. The computation of diluted earnings per share for the three months ended March 31, 2003 did not assume the conversion of the 7% Notes because the effect was antidilutive.

The following table represents a reconciliation of weighted average shares outstanding for the three months ended March 31, 2004 and 2003:

	Three Months	
	2004	2003
Basic weighted average shares outstanding	9,365,931	8,625,548
Effect of dilutive restricted stock	115,769	61,846
Effect of dilutive employee stock options	40,655	
	<hr/>	<hr/>
Diluted weighted average shares outstanding	9,522,355	8,687,394

Repurchase and Exchange of Common Stock and Notes

In conjunction with the offering of \$120,000 of the 4.50% Notes, on March 22, 2004, Avatar's Board of Directors authorized Avatar to use up to approximately \$43,000 of the gross proceeds to purchase shares of its common stock in privately negotiated transactions. On March 30, 2004, Avatar used approximately \$42,906 to purchase 1,141,400 shares of its common stock at a price of \$37.59 per share.

Under previous authorizations by the Board of Directors to purchase from time to time, shares of its common stock and/or 7% Notes in the open market, through privately negotiated transactions or otherwise, depending on market and business conditions and other factors, from January 1 through March 7, 2003, Avatar repurchased \$5,225 of its common stock representing 229,758 shares and \$7,585 principal amount of its 7% Notes. As of March 31, 2004, the remaining authorization is \$26,350.

Table of Contents**Notes to Consolidated Financial Statements (dollars in thousands except per share data) (Unaudited)
continued****Stock-Based Compensation**

Avatar has accounted for stock-based compensation using the intrinsic value based method in accordance with Accounting Principles Board Opinion No. 25, *Accounting for Stock Issued to Employees* and related interpretations. For stock options granted, no compensation expense has been recognized because all stock options granted have exercise prices greater than the market value of Avatar's stock on the date of the grant. For restricted stock units granted, compensation expense of \$409 and \$344 has been accrued for the three months ended March 31, 2004 and 2003, respectively.

SFAS No. 123, as amended by SFAS No. 148, requires disclosure of pro forma income and pro forma income per share as if the fair value based method had been applied in measuring compensation expense. The following table summarizes pro forma net income and earnings per share in accordance with SFAS No. 123, for the three months ended March 31, 2004 and 2003 had compensation expense for Avatar's option plan been based on fair value at the grant date:

	2004	2003
	<u> </u>	<u> </u>
Net income as reported	\$8,384	\$2,022
Add: Stock-based compensation expense included in reported net income, net of related tax effects	254	213
Deduct: Stock-based compensation expense determined using the fair value method, net of related tax effects	<u>(300)</u>	<u>(222)</u>
Pro forma net income	<u>\$8,338</u>	<u>\$2,013</u>
Earnings Per Share:		
Basic		
As reported	<u>\$ 0.90</u>	<u>\$ 0.23</u>
Pro forma	<u>\$ 0.89</u>	<u>\$ 0.23</u>
Diluted		
As reported	<u>\$ 0.88</u>	<u>\$ 0.23</u>
Pro forma	<u>\$ 0.88</u>	<u>\$ 0.23</u>

Joint Ventures

On March 17, 2004, Avatar entered into a joint venture for development of Regalia (the Regalia Joint Venture), a luxury residential highrise condominium on an approximately 1.18-acre oceanfront site in Sunny Isles Beach, Florida, approximately three miles south of Hollywood, Florida. Avatar has a 50% equity interest in the Regalia Joint Venture and is managing member of the project. Avatar contributed \$1,000 to the Regalia Joint Venture on March 25, 2004 to pay all monetary obligations due and payable. Avatar's 50% equity partner contributed and conveyed, by special warranty deed, the 1.18-acre property which is subject to a \$5,000 mortgage. Avatar has agreed to execute any required guaranty, if any, for the benefit of a third-party lender to the Regalia Joint Venture pursuant to future construction financing of the project. Avatar has also guaranteed certain additional contributions, if any, to fund operations. Avatar has consolidated the assets and liabilities of the Regalia Joint Venture into the consolidated balance sheet as of March 31, 2004 and has eliminated all significant intercompany accounts and transactions.

Table of Contents**Notes to Consolidated Financial Statements (dollars in thousands except per share data) (Unaudited)
continued****Joint Ventures continued**

On April 14, 2004, Avatar paid off the \$5,000 mortgage that existed when the Regalia Joint Venture was formed.

In late-December 2002, Avatar entered into a joint venture in which it committed to fund up to \$25,000 for the development of Ocean Palms (the Ocean Palms Joint Venture), a 38-story, 240-unit highrise condominium on a 3.5-acre oceanfront site in Hollywood, Florida. Construction commenced in late-2003 and during the first quarter of 2004 surpassed the preliminary stage of construction whereby recognition of profits under the percentage completion method commenced. Avatar has a 50% equity interest in the Ocean Palms Joint Venture and is accounting for its investment under the equity method whereby Avatar will recognize its share of profits and losses. As of March 31, 2004, Avatar funded \$20,000 of its commitment to fund the Ocean Palms Joint Venture.

The following is the Ocean Palms Joint Venture's condensed balance sheet as of March 31, 2004 and December 31, 2003:

	March 31, 2004	December 31, 2003
	<u> </u>	<u> </u>
Assets:		
Cash and cash equivalents	\$ 101	\$ 585
Restricted cash	24,551	20,591
Land and other inventories	28,711	35,401
Other assets	25,019	3,777
	<u> </u>	<u> </u>
Total assets	\$78,382	\$60,354
	<u> </u>	<u> </u>
Liabilities and equity:		
Accounts payable	\$ 5,320	\$ 587
Deposits	29,973	24,971
Notes payable	19,292	17,247
Equity of:		
Avatar	20,000	20,000
Joint venture partner	(163)	(163)
Retained earnings (loss)	3,960	(2,288)
	<u> </u>	<u> </u>
Total liabilities and equity	\$78,382	\$60,354
	<u> </u>	<u> </u>

Avatar's share of the net profit (loss) from the Ocean Palms Joint Venture is \$3,041 and (\$304) for the three months ended March 31, 2004 and 2003, respectively.

Table of Contents**Notes to Consolidated Financial Statements (dollars in thousands except per share data) (Unaudited)
continued****Joint Ventures continued**

The following is the Ocean Palms Joint Venture's condensed statement of operations for the three months ended March 31, 2004 and 2003:

	2004	2003
	<u> </u>	<u> </u>
Gross margin on condominium sales	\$7,008	\$
Interest and other income	57	5
Costs and expenses	(817)	(613)
	<u> </u>	<u> </u>
Net income (loss)	\$6,248	(\$608)
	<u> </u>	<u> </u>
Avatar's share of net income (loss)	\$3,041	(\$304)
	<u> </u>	<u> </u>

Contingencies

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

In addition, on July 22, 2003, a holder of the 7% Notes filed a lawsuit against Avatar and certain of its officers in the federal district court of Delaware seeking class action status and alleging that Avatar violated Section 12(a)(2) of the Securities Act of 1933 with respect to its partial redemption of \$60,000 of the 7% Notes. Avatar believes that the allegations contained in the lawsuit are without merit and intends to take all appropriate actions to vigorously defend its position.

Discontinued Operations

During February 2004, Avatar closed on the sale of the Harbor Islands marina located in Hollywood, Florida for a sales price of approximately \$6,711. The pre-tax gain of approximately \$2,784 on this sale and the operating results for the three months ended March 31, 2004 and 2003 have been reported as discontinued operations.

Table of Contents**Notes to Consolidated Financial Statements (dollars in thousands except per share data) (Unaudited)
continued****Financial Information Relating To Industry Segments**

The following table summarizes Avatar's information for reportable segments for the three months ended March 31, 2004 and 2003:

	<u>2004</u>	<u>2003</u>
Revenues:		
Segment revenues		
Primary residential	\$51,552	\$32,224
Active adult community	23,295	11,856
Commercial and industrial and other land sales	374	3,836
Other operations	2,518	1,786
	<u>77,739</u>	<u>49,702</u>
Unallocated revenues		
Equity earnings from unconsolidated joint venture	3,041	
Deferred gross profit	303	300
Interest income	144	470
Other	130	69
	<u>3,618</u>	<u>839</u>
Total revenues	<u>\$81,357</u>	<u>\$50,541</u>
Operating income (loss):		
Segment operating income (loss)		
Primary residential	\$ 9,570	\$ 6,269
Active adult community	1,911	(1,339)
Commercial and industrial and other land sales	218	3,130
Other operations	835	338
	<u>12,534</u>	<u>8,398</u>
Unallocated income (expenses)		
Equity earnings (loss) from unconsolidated joint venture	3,041	(304)
Deferred gross profit	303	300
Interest income	144	470
General and administrative expenses	(4,439)	(3,500)
Interest expense		(873)
Other	(1,173)	(1,350)
	<u>(2,024)</u>	<u>(2,953)</u>

Income from continuing operations before income taxes	\$10,410	\$ 3,141
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PART II OTHER INFORMATION

Item 6. Exhibits and Reports on Form 8-K

Exhibits

- 31.3 Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (filed herewith).
- 31.4 Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (filed herewith).
- 32.3 Certification of Chief Executive Officer required by 18 U.S.C. Section 1350 (as adopted by Section 906 of the Sarbanes-Oxley Act of 2002) (filed herewith).
- 32.4 Certification of Chief Financial Officer required by 18 U.S.C. Section 1350 (as adopted by Section 906 of the Sarbanes-Oxley Act of 2002) (filed herewith).

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SIGNATURES

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

AVATAR HOLDINGS INC.

Date: May 21, 2004

By: /s/ Charles L. McNairy
Charles L. McNairy
Executive Vice President, Treasurer and
Chief Financial Officer

Date: May 21, 2004

By: /s/ Michael P. Rama
Michael P. Rama
Controller and Chief Accounting
Officer

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Exhibit Index

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