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IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR OSCEOLA COUNTY, FLORIDA
CIVIL DIVISION

SLADE R. CHELBIAN, individually and on behalf of all similarly situated persons,

Plaintiff,

v.

Case No.: 2020-CA-002033
Division: 22

AVATAR PROPERTIES INC., *et al.*

Defendants.
_____/

DEFENDANTS' FIRST AMENDED ANSWER AND AFFIRMATIVE DEFENSES TO THE FIRST AMENDED CLASS ACTION COMPLAINT

Defendants, Avatar Properties Inc. ("Avatar") and Taylor Morrison Home Corporation ("Taylor Morrison") (collectively, "Defendants"), hereby file their First Amended Answer and Affirmative Defenses to the First Amended Class Action Complaint filed by Slade R. Chelbian, individually and on behalf of all similarly situated persons, and state as follows:

Introduction

1. Denied.

2. Denied.

3. Defendants deny that Florida's Homeowners' Association Act governs declarations of covenants recorded against residential parcels and protects homeowners from the inherent risk of developers abusing their power to record such

declarations. Plaintiff misstates and mischaracterizes the explicit purpose, scope, and application of the HOA Act as set forth in Florida Statute 720.302(1) (2020). Florida Statute 720.302(1) (2020) explicitly provides that "The purposes of this chapter are to give statutory recognition to corporations not for profit that operate residential communities in this state, to provide procedures for operating homeowners' associations, and to protect the rights of association members without unduly impairing the ability of such associations to perform their functions." (emphasis added). Additionally, Plaintiff's allegation that the Act "only authorizes declarations that impose assessments for community expenses; the Act prohibits imposing assessments for profits" constitutes a legal conclusion, for which no answer is required. To the extent an answer is required, Defendants are without knowledge as to the truth or falsity of the remaining allegations as framed, and therefore deny the same.

4. Denied.

5. Admitted only that Plaintiff purports to raise claims for declaratory, equitable, and injunctive relief and seeks alleged damages for the same. Otherwise, denied.

Parties, Jurisdiction, and Venue

6. Defendants are without knowledge sufficient to admit or deny Plaintiff's current legal residence, and therefore deny the same. However, it is

admitted that Plaintiff owned a residential parcel within the Bellalago community at the time of filing the Complaint.

7. Admitted.

8. Admitted.

9. Admitted for jurisdictional purposes only. Otherwise, denied as to the merits of any purported damages claimed by Plaintiff.

10. Admitted for venue purposes only that the property that is the subject of this litigation is located in Osceola County, Florida. Otherwise, denied.

11. Defendants are without knowledge sufficient to admit or deny this allegation, and therefore deny the same.

Development of Bellalago

12. Denied.

13. Admitted.

14. Admitted that a declaration is recorded at OR 2350/836. Otherwise, denied.

15. Admitted that an amended declaration was recorded at OR 3235/2695. Otherwise, denied.

16. Admitted that subsequent amendments were recorded. Otherwise, denied.

Club Fee Scheme

17. Admitted that the Bellalago Declaration was recorded. Otherwise, denied.

18. Admitted that the Bellalago Community Association, Inc. was a separate entity from Defendants and operated as the homeowners' association for the Bellalago community. Otherwise, denied.

19. The referenced document speaks for itself and any characterizations or references to this document are therefore denied.

20. Admitted that Section 6 of the First Amendment to the Amended and Restated Bellalago and Isles of Bellalago Club Plan recorded on August 29, 2008 is titled "Club Dues." Otherwise, denied.

21. This allegation states a legal conclusion and, therefore, Defendants can neither admit nor deny the same.

22. Denied.

23. Denied, including all subparagraphs.

24. This allegation states a legal conclusion and, therefore, Defendants can neither admit nor deny the same.

Homeowners' Association Act

25. Denied as Plaintiff misstates and mischaracterizes the explicit purpose, scope, and application of the HOA Act as set forth in Florida Statute 720.302(1)

(2020). Florida Statute 720.302(1) (2020) explicitly provides that "The purposes of this chapter are to give statutory recognition to corporations not for profit that operate residential communities in this state, to provide procedures for operating homeowners' associations, and to protect the rights of association members without unduly impairing the ability of such associations to perform their functions." (emphasis added).

26. Admitted that section 720.301 (2020), Fla. Stat., contains definitions, including the definition of "assessment" and "amenity fee." Otherwise, all other allegations and characterizations in this paragraph are denied.

27. This allegation states a legal conclusion and, therefore, Defendants can neither admit nor deny the same.

28. This allegation states a legal conclusion and, therefore, Defendants can neither admit nor deny the same.

29. This allegation mischaracterizes and attempts to broaden the scope of section 720.305's application beyond the plain language of the statute, and it states a legal conclusion based on this mischaracterized expansion. Therefore, Defendants can neither admit nor deny the same. It is denied, however, that Plaintiff is entitled to an award of attorney's fees.

Liability Allegations

30. Denied.

31. Denied.

32. Denied.

33. Denied.

34. Denied.

35. Admitted only that an acquisition took place. Otherwise, denied.

36. Denied.

37. Denied.

38. Denied.

39. Denied.

Class Representation Allegations

40. Admitted for the purposes of class certification as stipulated to by the parties. Otherwise denied as to the characterizations and references to a "Membership Fee."

41. Admitted only that there are more than 1,800 homes in Bellalago, various individual homeowners in Bellalago have paid Club Dues, and that their identities can be ascertained. Otherwise, without knowledge and therefore denied.

42. Admitted for the purposes of class certification as stipulated to by the parties. Otherwise, without knowledge and therefore denied.

43. Admitted for the purposes of class certification as stipulated to by the parties. Otherwise denied as to the characterizations and references to a "Membership Fee."

44. Admitted for the purposes of class certification as stipulated to by the parties. Otherwise, without knowledge and therefore denied.

45. Admitted for the purposes of class certification as stipulated to by the parties. Otherwise, without knowledge and therefore denied.

46. Admitted that Plaintiff purports to bring this action under Rule 1.220(b)(2) of the Florida Rules of Civil Procedure. Otherwise, denied.

47. Admitted that Plaintiff purports to bring this action under Rule 1.220(b)(3) of the Florida Rules of Civil Procedure. Otherwise, denied.

Declaratory Relief Allegations

48. Admitted that Plaintiff purports to state a claim for declaratory relief on behalf all those similarly situated. It is denied, however, that Plaintiff is entitled to the relief sought.

49. Denied.

50. Denied.

51. Denied.

52. Denied.

53. Denied.

54. Denied.

55. Denied.

Count I

Declaratory Relief—Invalidity of Perpetual Covenant

56. Defendants re-allege their responses to paragraphs 1-55 as if fully restated herein.

57. Denied.

58. Denied.

59. Denied.

60. Admitted that the Defendants' position, pursuant to the valid and enforceable Club Plan, is that the obligation is a valid perpetual covenant that runs with the land and not terminable at will. Otherwise, denied.

61. Denied.

62. Denied.

Count II

Injunctive Relief—Prohibiting Future Profit from Club Membership Fee

63. Defendants re-allege their responses to paragraphs 1-55 as if fully restated herein.

64. This allegation states a legal conclusion and, therefore, Defendants can neither admit nor deny the same.

65. Denied.

66. Denied.

67. Denied.

68. Denied.

Count III

Equitable Relief and Damages—for Violation of § 720.308, Fla. Stat.

69. Defendants re-allege their responses to paragraphs 1-55 as if fully restated herein.

70. This allegation states a legal conclusion and, therefore, Defendants can neither admit nor deny the same.

71. Denied.

72. Denied.

73. Denied.

74. Denied.

75. Denied.

76. Denied.

Request for Relief

77. Defendants deny that Plaintiff is entitled to any of the relief requested by Plaintiff, including any entitlement to attorneys' fees.

First Defense

Plaintiff has not and cannot state any claim against Taylor Morrison. Taylor Morrison was not and is not the developer of Bellalago as defined under Florida Statute section 720.301(6). Additionally, Taylor Morrison is not a party to the Purchase Agreements, the Master Declaration for Bellalago, the Club Plan, or any other documents pertinent to this matter.

Second Defense

Plaintiff has failed to state a cause of action for declaratory relief—Count I. On August 29, 2008, Avatar through its Executive Vice President executed the First Amendment to the Amended and Restated Bellalago and Isles of Bellalago Club Plan ("First Amendment to the Club Plan"). A true and accurate copy of the First Amendment to the Club Plan is attached hereto as Exhibit A. The First Amendment to the Club Plan explicitly states that "all defined terms in this First Amendment, inclusive of and not limited to the Recitals, shall have such meaning as set forth in the Club Plan *unless a different meaning is set forth herein and in such event the meaning provided herein shall govern.*" (emphasis added). It further states that "Section 6 of the Club Plan entitled Club Dues is **deleted in its entirety and replaced with the following**." (emphasis added). In doing so, Avatar removed the "Club Membership Fee" in the Amended and Restated Club Plan. Avatar revised the Club Plan, which provides that "Club Dues shall be calculated such that the

Members bear all of the expenses attributable to the operation of the Club…." Section 6.6, First Amendment to the Club Plan. The First Amendment to the Club Plan also provides that it "shall be a covenant running with the land and all of Bellalago™ and Isles of Bellalago™, and shall be binding upon Club Owner's successors and assigns." *Id*. at 4. Since Plaintiff is seeking a declaration based on provisions that are no longer in effect, Plaintiff has failed to plead facts that establish a bona fide, actual, present, practical need for the declaration; that the declaration deals with a present, ascertainable state of facts or present controversy; that there is someone with an adverse interest in the subject matter; and that Plaintiff is not merely seeking an advisory opinion in light of Plaintiff's misguided reliance on ineffective and outdated provisions of the Club Plan.

Plaintiff has also failed to state a cause of action for declaratory relief because Florida courts have repeatedly held that restrictive covenants, such as those within the governing documents, including the Amended and Restated Club Plan (including all amendments thereto), are valid. *See Bessemer v. Gersten*, 381 So. 2d 1344 (Fla. 1980) (holding a developer in carrying out a uniform plan of development for a residential subdivision may arrange for the provision of services to the subdivision or for the maintenance of facilities devoted to common use, and may bind the purchasers of homes there to pay for them); *Palm Beach Cnty. v. Cove Club Investors, LTD*, 734 So. 2d 379 (Fla. 1999) (holding that a private club's right to

receive monthly fees paid by lot owners was a property interest running with the land); *Preserve Grove Isle, LLC v. Grove Isle Yacht & Tennis Club*, *LLC*, 2015 WL 5769084 (Fla. Cir. Ct.) (holding that developer is entitled to set dues at a reasonable amount to ensure a profit); *Citizens Nat'l Bank of Orlando v. Shell Oil Co.*, 232 So. 2d 230 (Fla. 4th DCA 1970) (holding that a covenant running with the land that bound the successors and assigns into the future without duration is valid); *Winn-Dixie Stores, Inc. v. Dolgencorp, Inc.*, 964 So.2d 261 (Fla. 4th DCA 2007) (noting that covenants do not typically have a stated termination point, and holding that absent a specified term or materially changed conditions, a real property covenant running with the land is without duration). Accordingly, Plaintiff has not stated a cause of action and is not entitled to a declaration that the governing documents create an invalid perpetual obligation.

Third Defense

Plaintiff's claim challenging the validity of the perpetual covenant contained in the governing documents is time barred by the applicable statute of limitations. The Amended and Restated Declaration for Bellalago and Isles of Bellalago was recorded in the public records of Osceola County on August 3, 2006, OR 3235/2695. The Amended and Restated Club Plan was recorded in the public records of Osceola County on August 3, 2006, OR 3235/2658. The recording of the governing documents triggered the statute of limitations to challenge the validity of the

perpetual covenant in the governing documents. More than fourteen (14) years passed prior to this action being instituted, and thus it is time barred.

Fourth Defense

Each respective resident's Purchase Agreement discloses that said Purchase Agreement is subject to the terms and obligations in the Amended and Restated Club Plan, including the First Amendment to the Club Plan. The term "Membership Fee" and its corresponding definition was removed from the Club Plan. Instead, the First Amendment to the Club Plan simply refers to "Club Dues," which provides that the "Club Dues shall be calculated such that the Members bear all of the expenses attributable to the operation of the Club…" Section 6.6, First Amendment to the Club Plan. Plaintiff has knowledge of, has received and accepted the application of their Club Dues, including fees, towards their pro-rata share of the Club Expenses. Accordingly, Plaintiff has waived, ratified, and is estopped from bringing any cause of action for violation of section 720.308 (2020), Fla. Stat., on the grounds that the "fees" constitute "pure profit."[1]

[1] Defendants acknowledge the ruling that assessments that resulted in profits are illegal under section 720.308. *Avatar Properties, Inc. v. Gundel*, 372 So. 2d 715, 718 (Fla. 6th DCA 2023). Defendants also acknowledge that a finding was made in the Gundel matter that the "membership fee…constituted pure profit." As stated in the defense, the term "Membership Fee" and its corresponding definition was removed from the Club Plan in this case. As such, *Gundel* is distinguishable on its facts, and therefore, this defense is brought in good faith in conjunction with the agreement reached by the parties. Moreover, to the extent that this Court disagrees, the defense is being brought to preserve any issues relating thereto for appeal.

Fifth Defense

The First Amendment to the Club Plan provides that the "Club Dues shall be calculated such that the Members bear all of the expenses attributable to the operation of the Club…." Section 6.6, First Amendment to the Club Plan. Monies received by Avatar from the Plaintiff in connection with the governing documents, including the Amended and Restated Club Plan (including any amendments thereto) are applied to the Club Expenses. As such, Defendants are entitled to set off or recoupment of its Club Expenses against any gross revenue collected as Club Dues under the governing documents, including any purported membership fees.

Sixth Defense

To the extent that they have been a party to a foreclosure or other court action involving Defendants and the Club Dues at issue, Plaintiff is estopped from asserting these causes of action against Defendants. Plaintiff cannot now raise claims asserting the illegality of the Club Dues when such claims constitute compulsory counterclaims, and these claims were not raised in an earlier action. The claims existed at the time of the earlier action, and successful prosecution of this action would nullify judgment or impair rights established in the initial action.

Seventh Defense

Plaintiff's Count III is barred in whole or in part by the applicable statute of limitations. The limitations time period to bring a cause of action for a statutory

violation is four (4) years. Thus, any alleged damages sought for payments made resulting in realized profits made more than four years from the date of filing the Complaint are time barred and not recoverable.

Eighth Defense

Plaintiff's claims (Counts I-III) are barred in whole or in part under the doctrine of Release, including any claims seeking monetary damages. Each respective resident's Purchase Agreement discloses that said Purchase Agreement is subject to the terms and obligations in the Amended and Restated Club Plan. Paragraph 26 of the Club Plan reads in part, "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… AS A FURTHER MATERIAL INDUCEMENT FOR CLUB OWNER TO SUBJECT THE CLUB PROPERTY TO THE CLUB PLAN, EACH OWNER DOES HEREBY RELEASE… CLUB OWNER, ITS OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS AND ITS AFFILIATES AND ASSIGNS FROM ANY AND ALL LIABILITY… RESPECTING THIS CLUB PLAN." As such, Plaintiff agreed to release Defendants from any and all liability resulting from invalidity of any part of the Amended and Restated Club Plan.[2]

[2] Defendants acknowledge the ruling in *Avatar Properties, Inc. v. Gundel*, 372 So. 2d 715 (Fla. 6th DCA 2023). This defense is being raised for preservation purposes.

Ninth Defense

Plaintiff's claims are barred by the doctrine of laches. The defense of laches applies where there is a delay in bringing an action which results in "injury, embarrassment, or disadvantage to any person and particularly to the person against whom relief is sought." *Fort Pierce Bank & Trust Co. v. Sewall*, 152 So. 617, 618 (Fla. 1934); *Cone v. Benjamin*, 27 So. 2d 90 (Fla. 1946); *Trevett v. Walker*, 89 So. 3d 998, 1000 (Fla. 3d DCA 2012). Here, Plaintiff has at all times been aware of the Club Plan and Declaration and the obligations and benefits arising thereunder, but they have not asserted any claim arising therefrom until the filing of this action. In turn, Avatar has spent considerable financial resources and efforts developing and maintaining the Club Facilities. Accordingly, Plaintiff's claims are barred by the doctrine of laches as Plaintiff's delay in bringing this action has resulted in significant prejudice to Defendants.

Tenth Defense

Plaintiff has failed to state any cause of action in Counts I-III because the term "assessment" as used in the HOA Act does not apply to the Club Dues at issue in this case, which are specifically exempted by the HOA Act because the Club is a commercial property intended for commercial use. The Club is part of a for-profit commercial enterprise and is owned by a for-profit commercial entity. More specifically, section 720.302(3)(b), Fla. Stat., explicitly states that the HOA Act does

not apply to "commercial or industrial parcels in a community that contains both residential parcels and parcels intended for commercial or industrial use," such as the Club Property at issue in this case. The Club Plan clearly states that the Club Facilities are private property. Furthermore, the Club Dues are charged pursuant to the Club Plan and not by the Association under the HOA Act.[3]

Plaintiff's Demand for Jury Trial

Plaintiff explicitly waived the right to a jury trial, and as such any request for a jury trial must be stricken. Plaintiff explicitly agreed under the Club Plan that "justice will be best served if all disputes respecting this Club Plan are heard by a judge, and not a jury." Section 24 ("Resolution of Disputes"), Amended and Restated Club Plan.

WHEREFORE, Defendants respectfully request that this Court deny Plaintiff the relief he seeks, dismiss the claims asserted against Defendants, grant Defendants their attorney's fees and costs, enforce the waiver of Plaintiff's right to jury trial, and for such further and additional relief as this Court deems appropriate.

/s/ Alicia Whiting Bozich
Alicia Whiting Bozich
Florida Bar No. 088883
Steven C. Dupré
Florida Bar No. 471860
D. Matthew Allen

[3] Defendants acknowledge the ruling in *Avatar Properties, Inc. v. Gundel*, 372 So. 2d 715 (Fla. 6th DCA 2023). This defense is being raised for preservation purposes.

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Counsel for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 13th, 2024, I caused the foregoing document to be electronically filed with the Clerk of Court using the Florida Courts ePortal and certify that the foregoing document is being served this day on all parties of record and registered users via the Florida ePortal.

/s/ Alicia Whiting Bozich
Attorney

EXHIBIT A

CFN 2008139538
Bk 03731 Pgs 0516 - 520; (5pgs)
DATE: 08/29/2008 01:18:00 PM
LARRY WHALEY, CLERK OF COURT
OSCEOLA COUNTY
RECORDING FEES 44.00

Return to: (enclose self-addressed stamped envelope)

Name:
PATRICIA KIMBALL FLETCHER, ESQ.
AVATAR PROPERTIES INC.
201 ALHAMBRA CIRCLE, 12TH FLOOR
CORAL GABLES, FL 33134

This Instrument Prepared by:
JEFF REMBAUM, ESQ.
SIEGFRIED, RIVERA, LERNER, DE LA TORRE & SOBEL, P.A.
1675 PALM BEACH LAKES BLVD.
SUITE 500
WEST PALM BEACH, FL 33401

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FIRST AMENDMENT TO THE AMENDED AND RESTATED BELLALAGO™ AND ISLES OF BELLALAGO™ CLUB PLAN

THIS FIRST AMENDMENT TO AMENDED AND RESTATED DECLARATION FOR BELLALAGO™ AND ISLES OF BELLALAGO™ CLUB PLAN (this "**First Amendment**") is made by Avatar Properties Inc., a Florida corporation (the "**Club Owner**").

WHEREAS, the Amended and Restated Bellalago™ and Isles of Bellalago™ Club Plan is recorded in Official Records Book 3235, Page 2658 et. seq. of the Public Records of Osceola County, Florida, as amended (the "**Club Plan**"); and

WHEREAS, the Club Plan governs the recreational facilities within Bellalago™ and Isles of Bellalago™, a residential community located in Osceola County, Florida that is subject to the Amended and Restated Declaration for Bellalago™ and Isles of Bellalago™ recorded in Official Records Book 3235, Page 2695, et. seq.; as amended by virtue of First Amendment to Amended and Restated Declaration for Bellalago™ and Isles of Bellalago™ recorded in Official Records Book 3446 at Page 1666 and in Second Amendment to Amended and Restated Declaration for Bellalago™ and Isles of Bellalago™ recorded in Official Records Book 3542 at Page 325, all of the Public Records of Osceola County, Florida; and

WHEREAS, Section 27 of the Club Plan sets forth, in pertinent part, that "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"; and

WHEREAS, the Club Plan provides that every portion of Bellalago™ and Isles of Bellalago™ is to be held, transferred, sold, conveyed, used and occupied subject to the covenants, conditions and restrictions hereinafter set forth; and

WHEREAS, all defined terms in this First Amendment, inclusive of and not limited to the Recitals, shall have such meaning as set forth in the Club Plan unless a different meaning is set forth herein and in such event the meaning provided herein shall govern.

WHEREAS, in the event that there is a conflict between this First Amendment and the Club Plan, this First Amendment shall control; and

WHEREAS, for the overall betterment of the Club not limited to its financial strength, Club owner desires to amend the Club Plan as set forth below:

The following Definitions are hereby incorporated to the Definitions set forth in Section 1 of the Club Plan:

"**Amenity Fee**" shall have the meaning set forth in Section 6.6 of the Club Plan.

"**Initial Club Dues**" shall have the meaning set forth in Section 6.4 of the Club Plan.

"**Payment Date**" shall have the meaning set forth in Section 6.3 of the Club Plan.

The Definition for Special Use Fee is hereby deleted in its entirety as shown on the Club Plan and replaced with the following:

"**Special Use Fee**" shall have the meaning set forth in Section 6.6 of the Club Plan.

Section 6 of the Club Plan entitled Club Dues is deleted in its entirety and replaced with the following.

6. Club Dues

6.1. The foregoing recitals are hereby specifically incorporated herein as if fully set forth in this Section 6.

6.2. Club Dues. In consideration of the construction and providing for use of the Club by the Owners, each Owner by acceptance of a deed to a Home shall be deemed to have specifically covenanted and agreed to pay all Club Dues which are set forth herein.

6.3. Club Dues Payment. Club Owner presently intends to collect Club Dues on a monthly basis (the "**Payment Date**") and reserves the right, in Club Owner's sole discretion, to change the Payment Date upon which Club Dues are payable to require payment on a quarterly basis, semi annual basis or such other period that Club Owner believes is in the best interest of the Club. Such change may be made by Club Owner at any time and shall become immediately enforceable upon notice being provided to the Member(s) of Club Owner's election to change the Payment Date.

6.4. Initial Club Dues. Each Owner, by acceptance of a deed or instrument of conveyance for the acquisition of title in any manner (whether or not expressed in the deed) for a Home, not limited to any purchaser at a judicial sale, covenants and agrees to pay at the time of closing of such conveyance, the pro-rata share of monthly Club Dues then due for the month of closing plus three (3) times the monthly Club Dues assessed at that time by Club Owner, to be credited against said Owner's yearly Club Dues obligation (the "**Initial Club Dues**"). Initial Club Dues are immediately due and payable to the Club. The Club shall enforce the payment of the Initial Club Dues in the same manner as the Club Dues. The term "Club Dues," in addition to the definition(s) set forth in the Club Plan, shall specifically include the Initial Club Dues and all other charges incurred by a Member. A Member shall pay Club Dues for each and every Home owned by the Member.

6.5. Default. In the event the Club Dues are not received by the Payment Date, such Member shall be considered in default of the Members obligation to the Club and subject to all such penalties and actions as may be taken by the Club as set forth in the Club Plan, not limited to those remedies set forth in Section 9 of the Club Plan. Notwithstanding the foregoing, Club Owner, in its sole discretion, may require an Owner or all Owners to pay Club Dues on an annual or other basis, in advance, based on prior payment history or other financial concerns. Club Owner specifically reserves the right to accelerate Club Dues for the remainder of any budget year against any Member(s) who fails to timely remit Club Dues by the Payment Date and, in such event, such accelerated Club Dues are immediately due and payable to the Club.

6.6. Club Dues Calculation. The Club Dues shall be calculated such that the Members bear all of the expenses attributable to the operation of the Club, not limited to maintenance and repair and as determined in the reasonable discretion of the Board and Club Owner. In the event of disagreement between the Board and Club Owner, Club Owner shall prevail. Different Homes may pay a different level of assessments based on the size and location of the Home. In addition thereto, Members may pay different levels of assessment based upon a higher usage of the Club facilities or higher level on services provided, etc., as determined by the Board or Club Owner as may be applicable. Club Owner or the Board may elect by amendment, resolution, rule or regulation to assess a specific charge related to the use of the Club for tickets, special events, performances or other such matters as may come to the attention of the Club (the "**Special Use Fee**"). Members shall also be charged a fee for such amenities as, and not limited to, vending machines, video game machines, entertainment devices, etc. (the "**Amenity Fee**"). Amenity Fees shall become the sole property of the Club Owner and shall not offset or reduce the Club Dues in any manner whatsoever. Regardless of intent, if any Member, their guest, invitee, licensee, agent, or employee does any act whatsoever that causes an increase to the Club's cost(s) not limited to maintenance, repair, replacement or insurance, such Member, in the sole discretion of Club Owner, shall be assessed for same which said assessment shall immediately be considered part of the Member's Club Dues. By virtue of each Member voluntarily being an Owner, each Member consents to the assessment regime set forth in this Section 6 and specifically consents to the types and manner of allocation of Club Dues as may be amended in accordance with the procedures set forth herein.

6.7. Builders. Builders shall have no membership rights in the Club whatsoever. Notwithstanding each Builder shall pay Club Dues on each Home upon the Home receiving a Certificate of Occupancy or such other similar instrument. In the event Club Owner determines it is in the Club's interest, Club Owner may, in its sole discretion, exempt any Builder from any

and all obligations set forth in this Section 6. It shall be incumbent on any Builder who benefits from such exemption to have a writing in the form of a letter or other agreement signed by the Club Owner to evidence same.

6.8. Club Owner. In no event shall the Club Owner be responsible for any fee or expense attributable or assessable against the Club, not limited to any charge, expense or judgment whatsoever unless, Club Owner, in its sole discretion elects to do so. Club Owner may, in its sole discretion elect to loan the Club funds evidenced in the form of a promissory note of or such other instrument as determined in the sole discretion of the Club Owner. In such event the Club agrees to abide by the terms of such loan.

6.9. Taxes. Each Member shall be responsible for all applicable taxes incurred as a result of the Member's membership interest in the Club and which are assessable by Club Owner against the Member in the same manner as the Club Dues and Initial Club Dues. Club Owner makes no representation to any Member in regard to same except as set forth in this Section 6.9.

6.10. Time Is Of The Essence. Timely payment of all sums due, and performance of all other obligations at all times stated shall be of the essence.

6.11. Priority. Each Member agrees to pay all taxes, assessments, and obligations relating to their Home and further understands and agrees that failure to timely pay same could cause a lien to be recorded against their Home and in such event said lien shall be superior to the Club's lien, if any. A lien payable for Assessments shall be inferior to any lien recorded by the Club regardless of when so recorded.

Covenant Running with the Land. This First Amendment shall be a covenant running with the land and all of Bellalago™ and Isles of Bellalago™, and shall be binding upon Club Owner's successors and assigns.

IN WITNESS WHEREOF, the Club Owner set its hand and seal as of this 25th day of August, 2008.

WITNESSES:

Print Name: Maribel G. Pila

Print Name: Nora E. Sanchez

AVATAR PROPERTIES INC.,
a Florida corporation,

By: Patricia K Fletcher
Name: Patricia Kimball Fletcher
Title: Executive Vice President

AVATAR PROPERTIES INC. CORPORATE SEAL 1995 FLORIDA

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

The foregoing was acknowledged before me this 25th day of August, 2008 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, on behalf of the corporation.

My commission expires:

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

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MARIBEL G. PILA
Notary Public - State of Florida
My Commission Expires Oct 20, 2010
Commission # DD 594512