

5-2000



DECLARATION OF RESTRICTIONS FOR
AUGUSTA RANCH SUBDIVISION

On this 1st day of November, 2002, AVIARA, INC., (hereinafter Developer), and BUSCHER DEVELOPMENT, INC., being all of the owners of the following described real property and all portions thereof, located in Billings, Yellowstone County, Montana, hereby establish and declare the following building and use restrictions all of which shall be applicable to said real property:

- Block 1: Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15.
- Block 2: Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 13.
- Block 3: Lot 4.
- Block 4: Lot 1.
- Block 5: Lots 1 and 2.
- Block 6: Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22.

of Augusta Ranch Estates Subdivision, (hereinafter Augusta Ranch), in the City of Billings, Yellowstone County, Montana, according to the official plat on file and of record in the office of the Clerk and Recorder of said County, under Document No. 3211050.

The owners place these covenants upon the above-described lots for the benefit of the owners of all of the above-described lots in Augusta Ranch and any lots later subjected to the provisions of this Declaration, for the purpose of protecting the value and desirability of all of said lots in said subdivision.

These restrictions do not apply to Lot 12, Block 2, and Lots 1, 2, and 3, Block 3, of Augusta Ranch, which Developer expects to be used for patio homes and possibly a community center to serve all of Augusta Ranch Estates Subdivision and neighboring properties. However, Developer hereby reserves the right, in its sole discretion, to subject Lots 1 and 2, Block 3, of Augusta Ranch Estates Subdivision to the provisions of this Declaration, by executing and recording an amendment to this Declaration, adding the lots to the provisions of this Declaration. The consent of the Augusta Ranch Homeowners Association, (the Association), or of any other Lot owner, mortgagee, or trustee or beneficiary of any trust indenture, shall not be required for such amendment. From and after the recording date of such amendment, the owners of Lots 1 and 2, Block 3, shall be members of the Association, and shall be bound by the provisions of this Declaration and the By-laws of the Association, as the same may be amended from time to time.

All lots now subject or later subjected to this Declaration are hereafter referred to



as "the lots". The covenants, restrictions and conditions herein contained shall run with the land and shall be binding on all owners of the lots, and all persons claiming under them. The Grantees of any of the lots by acceptance of a conveyance, covenant and agree faithfully to observe and abide by all of said conditions, covenants and restrictions.

GENERAL RESTRICTIONS

1. Each of the lots shall be known and described as a residential lot. Except as otherwise provided below, no structures shall be erected, altered or placed or permitted to remain on any residential lot, as aforesaid, other than one single family dwelling with attached or detached garage for two or more cars, storage buildings, and playhouses for children.

2. No noxious or offensive activity shall be permitted on any of the lots nor shall anything be done thereon which may be or become an annoyance or a nuisance to the neighborhood.

3. "Residential" as used herein shall be held and construed to exclude hospitals and churches, and to further exclude professional and commercial uses and any such usage of this property is expressly prohibited, except in-home trades, professions and businesses shall be permitted provided that the owner has no outside employees working in the home, provided that the business or trade does not increase vehicle traffic to the home by more than six (6) vehicles per day, round trip, and provided the in-home trade, profession or business complies with the zoning ordinances of the City of Billings. No signs identifying in-home businesses shall be allowed. No vehicles, equipment or products used in a trade or business shall be stored outside on any of the lots, except vehicles used by building contractors during construction.

4. No trailer or garage shall be at any time used as a residence.

5. No swine, poultry, goats, or other livestock shall be permitted on any of the lots.

6. No animals shall be raised or cared for on a breeding or other commercial basis. No wild animals may be kept as pets. The number of household pets may not exceed four (4), with the maximum number of one species limited to three (3). Pets which remain enclosed inside, such as fish, may be kept in unlimited numbers. All pets shall be kept under the control of their owner. Owners shall promptly clean up after their pets and shall be responsible for any damage caused by their pets. No resident shall keep a pet which is a nuisance to other residents in Augusta Ranch Subdivision. Owners may install a fenced dog run and dog kennel in their back yard.



7. No trash, ashes, or other refuse may be thrown or dumped or stored on any of the lots.

8. No signs, bill-boards, posters or advertising devices of any character except subdivision promotion signs, or signs advertising the lot for sale shall be placed on any of the lots. Contractor's signs may be displayed during construction of a residence.

9. All garbage cans and receptacles shall be stored underground or on wheeled carts in garages so that the same are out of public view except when wheeled to the point of pick up on pick up days.

10. Except for playground equipment similar to that in use in public school playgrounds, high, dangerous, or homemade play devices for children or tree houses shall not be constructed or maintained on any of the lots; new, professionally constructed playhouses for children are allowed.

11. No fence, hedge or wall shall be erected on the street side of any corner lot so as to endanger traffic, nor extend toward the front of any corner lot further than the forward part of the home which is built on such lot.

12. A decorative fence or wall will be constructed by Developer or along some or all of the westerly boundary of Augusta Ranch Subdivision, where it adjoins Molt Road. The fence or wall shall be maintained by Augusta Ranch Owner's Association, Inc. (The Association), using the same materials, design, and color as the original installation. The Developer may also construct a bike trail in the right-of-way outside the fence or wall, and any entry signs and landscaping. The Association shall be responsible for maintaining any bike trail, the entry signs, and the adjoining landscaping, and the inside and outside of the fence.

13. The Association shall maintain the boulder pits in the dedicated right of way, if they are not adequately maintained by the City; the Association shall be responsible for any damages to the Yellowstone Country Club and its properties (i) caused by water running from the boulder pits (to be built on portions of Augusta Ranch Subdivision abutting the Yellowstone Country Club property) onto Yellowstone Country Club property, and (ii) otherwise caused by the water drainage patterns resulting from the development and use of lots in the Augusta Ranch Subdivision. The Association, the Developer and Buscher Development Inc. hereby acknowledge that the Yellowstone Country Club has given good and valuable consideration, the receipt and sufficiency of which each of them hereby acknowledges having received, for the Association's undertakings for the benefit of the Yellowstone County Club under these Declarations including, without limitation, under this Section 13.

14. No trailer house, boats, motorcycles, motor bikes, touring vehicles, or



recreational vehicles shall be stored on any of the lots unless enclosed so that they will be concealed from the view of streets and lots which are adjacent to the lot on which they are located. These types of vehicles may be kept on the lot for a period up to five days for the purpose of loading, unloading, or winterizing.

15. Only underground utility lines shall be used in this subdivision, except for already existing overhead lines, if any.

16. Basketball hoops or backboards may not be mounted on any home or garage; portable basketball hoops may be placed on the driveway and basketball hoops mounted on a permanent stand may be placed in a location adjoining the driveway.

17. Owners shall be responsible for paying for any damage to the bike trail, sidewalks, the fence and/or wall along Molt Road, and to the landscaping adjoining the bike path or wall easement caused by the owner, tenants, their families or guests.

18. Golfers are permitted to enter on foot into the yards along the fairways for the purpose of retrieving their balls. Homeowners who purchase lots abutting the golf course are hereby notified that the golf course will produce noise and that there is a risk of their homes, pets, guests, vehicles and selves and family members being struck by golf balls.

19. All owners shall be obligated to maintain their homes, garages, outbuildings and yards so that they are clean, tidy and in good repair. Owners shall not permit peeling paint, broken sidewalks or driveways, broken shingles, or any other unsightly condition on their property. Lawns must be kept mowed and watered and dead or dying trees and shrubs must be removed so that all properties in Augusta Ranch reflect a high pride of ownership.

RESTRICTIONS ON BUILDING

20. A strip of land 11'5" wide parallel to and adjoining all curbs in the subdivision is part of the public right of way, and shall be used for a landscaped boulevard, with five foot wide sidewalks.

At the time each home on Masters Boulevard, Spalding Avenue, or Aviara Boulevard is built, the owner or builder shall install the five foot wide sidewalks within the public right-of-way, parallel to and one foot from the lot line. Each owner shall plant the remaining boulevard in grass and trees; a minimum of one tree, six feet or taller, between the sidewalk and street shall be required for each sixty foot length of boulevard adjoining the owners lot. The trees planted in this area must be approved both as to species and placement by the Association's Board of Directors. The homeowner shall be



responsible for mowing, watering and otherwise maintaining the boulevard landscaping. Owners of all other homes shall install five foot wide sidewalks adjoining the curb, at the time the house is built.

21. Any building or residence erected on a restricted lot shall be of new construction; no old or used buildings shall be moved onto any restricted lot.

22. Setbacks.

(a) No residence or other structure shall be located on any of the lots so that any part of such structure, other than entrance vestibules, awnings or minor decorative fixtures, is nearer than 25 feet from the front line of the lot on which the structure is located. Setbacks from any street for a structure situated on a corner lot shall comply with the City of Billings Zoning Ordinances.

(b) No building shall be located less than five (5) feet from either side lot line of the lot on which the building is located, measured from the lot line to the nearest wall of the building, (the side setback). Two story homes must comply with the side setback restrictions set forth in the zoning ordinances of the City of Billings in effect at the time of construction of the home.

(c) All buildings must be placed at least 30 feet away from the west boundary of Augusta Ranch Subdivision. No fences may be placed in any location along the western boundary except the western wall or fence constructed by Developer.

(d) There is a forty foot non-buildable area along the boundary line of the Yellowstone Country Club golf course. No fence or building is permitted in this area.

23. Height Restrictions.

(a) Homes located on the following lots shall not exceed one story in height, plus an optional basement, which may be a walkout or daylight basement:

Block 6: Lots 5 through 17.

No two story or split level homes shall be permitted on these lots.

(b) Homes on the remaining lots subject to these restrictions may be one story, two story or split level, with optional walkout or daylight basement; no home shall exceed two stories in height, and must comply with height restrictions imposed by the City of Billings Zoning Ordinances.

(c) All homes must also comply with the height restrictions imposed by the City of Billings zoning ordinances in effect at the time the home is built.

24. Size Restrictions.

Homes constructed on a lot described below shall meet or exceed the following minimum areas, excluding the area of the garage and the basement, if any:

(a) Block 1: Lots 10, 11, 12, 13, 14 and 15.



One story - 2,500 square feet.

Two story - 1,750 square feet on first story and 2,500 square feet total for first and second story.

(b) Block 1: Lots 5, 6, 7, 8 and 9.

Block 6: Lot 1, 2, 3, and 4.

One story - 1,750 square feet.

Two story - 2,250 square feet total in both stories.

(c) Block 2: Lots 3, 4, 5, 6, 7, 8, 9, 10 and 11.

Block 4: Lot 1.

Block 5: Lots 1 and 2.

One story - 1,750 square feet.

Two story - 2,000 square feet total in both stories.

(d) Block 1: Lots 1, 2, 3 and 4.

Block 2: Lots 1 and 2.

One story - 1,350 square feet.

Two story - 2,000 square feet total in both stories.

(e) Block 6: Lots 5, 6, 7, 8, 9 and 10.

One story - 1,850 square feet.

(f) Block 6: Lots 11, 12, 13, 14, 15, 16 and 17.

One story - 1,400 square feet.

(g) Block 6: Lots 18, 19, 20, 21 and 22.

One story - 1,400 square feet.

Two story - 1,850 square feet total in both stories.

The size of any proposed split-level home shall be approved by the Architectural Review Committee. The Committee shall take into consideration both the design of the home and its proposed location in determining whether or not it will approve the size of any split level home.

25. No manufactured home, modular home or log home shall be permitted in Augusta Ranch.

26. Fences may be constructed only of vinyl, metal or masonry, or combinations of these materials, except that dog runs may be fenced with chain link fence. Fences must be maintained by the lot owner in an attractive condition.

27. All lots and the adjoining boulevards must be fully landscaped within 8 months after substantial completion of construction of a residence on that lot.

28. Garages and detached buildings (except playhouses) shall have outside walls and a roof of the same materials and color as that used on the house.



29. No excavations, except that which is necessary for the construction of improvements, shall be permitted on any lot until such time as the actual construction of the house is to begin; except that the owner may drill and excavate for the purpose of testing the sub-soil conditions.

30. No building material of any manner or character shall be placed or stored on the property until the owner is ready to commence construction of improvements, and then such materials shall be placed within the property lines of the lot on which the house is to be erected and shall not be placed in the streets, on the sidewalks, or between the curb and property line. Construction of any building must be completed within 12 months after construction is commenced.

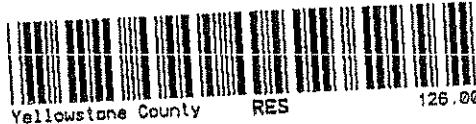
ARCHITECTURAL REVIEW

31. Architectural Review Committee. So long as Developer or Buscher Development, Inc. owns any of the above-described lots, or any Lots in Augusta Ranch which are hereafter subjected to the provisions of this Declaration, Buscher Development, Inc. shall have the sole authority to appoint an Architectural Review Committee (ARC), to review any and all Plans for homes or for improvements to any lot subject to this Declaration. The initial members of the ARC shall be Dennis Buscher, Linda Buscher and Trent Buscher upon sale of all lots by Developer and Buscher Development, Inc., the Association shall appoint the members of the ARC. Buscher Development, Inc., in its sole discretion, may elect to turn over its power to appoint the ARC members to the Association at any time prior to sale of all lots.

32. Required Plan Review. Except for homes and other improvements constructed by Buscher Development, Inc., no home or other improvement shall be erected, constructed, placed or maintained upon any lot, nor shall any remodeling, reconstruction or alteration of a building's exterior be made or continue to be made, unless and until the same has been approved in writing by the ARC. Owners must also obtain approval of the ARC to any changes to approved plans if those changes affect the exterior of the building or other exterior home or improvement.

33. Review Application. Before beginning the construction of any home or other improvement, any alteration of a building's exterior, the person desiring to erect, construct, or modify the same shall submit to the ARC two sets of the following Plans for the proposed home or other improvements, and any other information requested by the ARC.

- (a) Site Plan: A site plan showing: 1) the location of all improvements including Structures, fences, walls, driveways, parking areas, utilities, outbuildings, decks; and 2) existing topography and contour in relation to the proposed



home or other improvement and cut and fill excavation requirements; and 3) other pertinent information relating to the home or other improvement.

- (b) Building Plan: A building plan which shall consist of: 1) the Structures dimensions; and 2) elevation drawings or sketches of the exterior of the Structure(s); and 3) information concerning the exterior of the Structure(s) which shall indicate all exterior colors, materials and finishes, including roof, to be used.

The ARC may, in its discretion, require the Owner to furnish additional specifications, drawings, material samples or such other information as it deems necessary for the purpose of reviewing the application.

34. Basis of Approval. Approval by the ARC shall be based, among other things, on; a) conformity and harmony of external design with neighboring homes or other improvements, b) the effects of location of the proposed home or other improvements on neighboring Lots, c) relation of home or other improvements and finished ground elevations to existing topography and grades, d) the overall aesthetics of subdivision; and f) the conformity of Plans to the provisions of this Declaration.

The review will include subjective judgments about aesthetics which cannot be clearly defined in this Declaration. Each Owner, by acceptance of a deed to any lot subject to this Declaration, agrees to accept the decisions of the ARC as final and binding, and waives any right to challenge those decisions through legal action.

35. Decision. The ARC shall render its decision with respect to an application within thirty (30) days after the receipt of a complete application. The decision of the ARC can be in the form of an approval, a conditional approval, or denial and shall be in writing. A copy shall be mailed to the applying Owner, and to the Association's Board of Directors.

36. Non Liability. Neither the ARC nor any member thereof, or the Developer or any partner, officer, employee, agent, successor or assign thereof, shall be liable to the Association, any Owner or any other person for any loss, damage or injury arising out of or connected with the performance by the ARC members of their duties and responsibilities by reason of a mistake in judgement, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve an application. The aforementioned parties will not make decisions on, and assume no responsibility for; a) the structural capacity, safety features, or building code compliance of any home and other improvement, b) whether or not the location of a proposed home and other improvement is free from possible geologic or natural hazards, or other possible hazards caused by conditions occurring either on or off the subject property, c) the internal



operation or functional integrity of any home and other improvement, or d) any City of Billings, Montana zoning ordinance or building code violations.

Every person who submits an application to the ARC, by submission of such an application, and every Owner by acceptance of a deed to any lot agrees not to bring any action or suit against the Association, its Board, members of the ARC, or the Developer or its owners, officers, employees, agents, successors or assigns to recover damages resulting from the architectural review process set forth herein.

The decisions of the ARC and the requirement to obtain approval of the ARC may be enforced by the Association, or by any Owner, by bringing an action for specific performance, or for an injunction, prohibitory or mandatory. Such actions shall be timely if brought within four months after it becomes apparent that an owner has not obtained the required approval or has deviated from the approved plans, whichever occurs later. In any such action, the prevailing party shall be entitled to recover from the losing party all costs and attorney fees incurred.

37. Homes Exempt From Review. Plans for homes to be constructed by Buscher Development, Inc. shall not be subject to review by the ARC and Buscher Development, Inc. need not submit its plans to the ARC.

HOMEOWNERS ASSOCIATION

38. **Membership in Association.** All owners of the lots shall be members of a Montana non-profit corporation, formed or about to be formed, known as "AUGUSTA RANCH HOMEOWNERS ASSOCIATION", herein called "Association". Owner shall mean each person owning an undivided interest in a lot, as shown by the records of the Yellowstone County Clerk and Recorder. If such owner has sold to a third person under the terms of an agreement for future delivery of title, and notice of such agreement is recorded with the Yellowstone County Clerk and Recorder, such third person shall be deemed the owner. Co-owners, or joint owners, shall be deemed to be one member for the purposes of voting and assessment. The affairs of the Association shall be governed by its Bylaws, attached hereto as Exhibit "A".

39. **Obligations of the Association.** The Association shall have the responsibility for maintaining the bike path, if any, and the fence or wall along the west perimeters of Augusta Ranch Estates Subdivision, and paying all costs thereof, for obtaining and maintaining liability insurance on any bike path, and for paying the damages referred to in Section 13. If Developer constructs a Community Center, the Association shall also be



responsible for paying membership fees for use of the Community Center for each member of the Association. Provided however, that if the monthly membership fee for the community center shall ever exceed \$75.00 per month per lot, plus a maximum annual increase of 10% of the prior year's fees, membership fees shall no longer be an expense payable by the Association and the Association's obligation to pay such fees shall terminate. Although a Community Center is presently planned by Developer, Developer makes no guaranty that it will be built. In the event that Board fails to fix an annual assessment, the previous assessment shall remain in effect until changed by the Board.

40. **Rights of the Association.** The Association shall have the right, but not the obligation to enforce this Declaration. In the event that any Owner shall permit any home or other improvement, including any landscaping, which is the responsibility of such Owner to maintain, to fall into disrepair so as to create a dangerous, unsafe, unsightly or unattractive condition, the Association may notify the Owner to take corrective action. If corrective action is not taken by the Owner within a reasonable time, as determined by the Board, the Board may cause such corrective action to be taken and shall assess the expense of correction to the Owner as a special assessment, payable only by that owner. If an owner fails or refuses to pay such an assessment, the Association may file and foreclose a lien for the amount of the assessment, as provided below.

41. **Annual Assessments.** The Association, through its Board of Directors, shall establish and collect an annual assessment from each member to pay for all costs of the maintenance described in Section 37 above, to pay for liability insurance insuring the Association members against liability resulting from the Association's maintenance of the wall or fence and bike path, for administrative and legal expenses, for memberships in the community center, and for any other expenses authorized or required by the provisions of this Declaration. The Board ~~not shall~~ have the authority to increase the annual assessment more than 10% per year for these expenses without a vote of 51% of the homeowners, except that if Developer builds the Community Center, the assessment shall be increased to pay membership fees for the Community Center even if that increase is greater than 10%, and except further that an annual increase of greater than 10% may be required, without a vote of 51% of the homeowners, to pay the damages referred to in Section 13.

42. **Payment of assessments.** Each owner shall be responsible for the payment of assessments within thirty days after notice of assessment is given by the Board. Assessments paid more than thirty days after the date when due, shall bear interest at the rate of 12% per annum from the due date until paid. All payments upon assessments shall be applied first to interest and then to the earliest assessment due. Interest collected shall become part of the Association's account. In no event shall the interest charged be more



than permitted by the Montana usury statutes. All assessments collected by the Association may be commingled in a single fund. The Secretary-Treasurer of the Association shall maintain records showing the amounts of all assessments paid and unpaid. Such records shall be available for inspection at all reasonable times by owners or their representatives.

43. **Covenant to pay maintenance assessments.** Each lot owner, by acceptance of a deed, whether or not it shall be expressed in said deed, is deemed to covenant and agree to pay to the Association all assessments lawfully made by the Association and to waive any right said owner may have, under the laws of the United States or the State of Montana, to claim a homestead exemption for said assessments. Owners and their grantees shall be jointly and severally liable for all unpaid assessments due and payable at the time of conveyance of any lot, but without prejudice to the rights of the grantee to recover from the grantor the amounts paid by the grantee therefor. The Secretary-Treasurer of the Association shall notify third parties, upon their request, of the amount of unpaid assessments on any lot.

44. **Remedies for non-payment of assessments.** All unpaid sums assessed by the Association to any lot, together with interest, collection costs, costs of suit, and reasonable attorney fees, shall constitute a lien on such lot, and if filed of record, may be foreclosed in the same manner as a construction lien. Such lien shall not take priority over any sums unpaid on a first mortgage or trust indenture of record prior to the recording of the lien for assessments. Each assessment, together with interest, collection, costs and costs of suit, and reasonable attorney fees, shall also be the personal obligation of the owner of the lot against which the assessment was made at the time the assessment fell due and suit to recover a money judgment for unpaid assessments shall be maintainable by the Association against said owner without foreclosing or waiving the lien securing the same. All costs of collection of delinquent assessments, including but not limited to, court costs, costs of filing liens, and attorney fees, shall be the obligation of the non-paying owner, and may be added to the next regular assessment for that lot. No sale or transfer of a lot or unit shall relieve the acquirer from liability for past due assessments or from the lien thereof. All rights, remedies and privileges granted to the Association or the owners pursuant to the terms hereof, shall be deemed to be cumulative.

45. **Limitations on Liability of Association.** In no event shall the Association be liable to any property owner, his or her heirs, successors, assigns, family or guests, employees, agents, invitees, or lessees or to any person using the bike path or the Community Center for any damages arising out of the maintenance of the bike path or of use of the Community Center.



MISCELLANEOUS

46. **Severability.** Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

47. **Alterations to these Restrictions.** Any amendment to these restrictions must be in writing and signed by all of the owners of no less than 75% of the lots (by number of lots). These restrictions may be revoked in whole or in part and additional provisions may be added by written amendment signed by all owners of no less than 90% of the lots (by number). No amendment shall be effective until it is recorded in the office of the Yellowstone County Clerk and Recorder. No amendment or revocation of these restrictions shall take effect prior to sale of all Lots by Aviara, Inc. and by Buscher Development, Inc. unless signed by Aviara, Inc. and by Buscher Development, Inc. Notwithstanding the foregoing provisions of this Section 47, Section 13 or any other provision of this Agreement which, directly or indirectly, affects the obligations the Association has undertaken under Section 13 (including this sentence) may not be amended, modified, revoked, added to or otherwise changed without the prior written consent of the Yellowstone Country Club.

48. **Enforcement.** The Association, and each and every one of the owners of lots in Augusta Ranch Subdivision, Filing, including owners of patio homes on Lot 3, Block 3, and Lot 12, Block 2, and the owners of Lots 1 and 2, Block 3, and the Yellowstone Country Club (with respect to the provisions of these Declarations which are for the benefit of the Yellowstone Country Club including, without limitation, Section 13), shall have the right to enforce these restrictions and the covenants herein and any and all amendments thereto by civil action, including the right to injunctive relief and for damages, it being presumed that some damage would occasioned, by reason of the failure of any lot owner or owners to comply with these restrictions and the covenants herein contained. If litigation is commenced, the prevailing party shall have, in addition to any other remedy applicable at law or equity, a reasonable attorney's fee and expenses.



IN WITNESS WHEREOF, AVIARA, INC. and BUSCHER DEVELOPMENT, INC.
have executed this Declaration of Restrictions the day and year first above written.

AVIARA, INC.

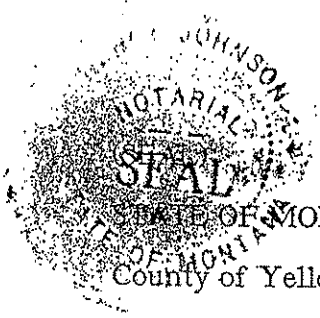
By: *James Buscher*
ITS, President

BUSCHER DEVELOPMENT, INC.

By: *James Buscher*
ITS, President

STATE OF MONTANA)
: ss.
County of Yellowstone)

This instrument was acknowledged before me on 17th November, 2002, by
James Buscher, President of AVIARA, INC.



Nancy Johnson
Printed Name: NANCY JOHNSON
Notary Public for the State of Montana
Residing at Dullin MT
My Commission Expires 5 Sep, 2004

STATE OF MONTANA)
: ss.
County of Yellowstone)

This instrument was acknowledged before me on 17th November, 2002, by
James Buscher, President of BUSCHER DEVELOPMENT, INC.



Nancy Johnson
Printed Name: NANCY JOHNSON
Notary Public for the State of Montana
Residing at Dullin MT
My Commission Expires 5 Sep, 2004



BYLAWS OF AUGUSTA RANCH HOMEOWNERS ASSOCIATION
(a non-profit corporation)

The Board of Directors of AUGUSTA RANCH HOMEOWNERS ASSOCIATION, a Montana non-profit corporation, hereby adopt the following Bylaws:

OFFICES

1. **Principal office.** The principal office of this Corporation is situated at 3671 Spalding Avenue, Billings, Montana 59106. The Board of Directors may change the principal office.

MEMBERS

2. **Membership.** Each owner of all of the following described lots shall be a member of the corporation:

Block 1: Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15.

Block 2: Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 13.

Block 3: Lot 4

Block 4: Lot 1.

Block 5: Lots 1 and 2.

Block 6: Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22.

of Augusta Ranch Subdivision, in the City of Billings, Yellowstone County, Montana, according to the official plat on file and of record in the office of the Clerk and Recorder of said County.

The owners of Lots 1 and 2, Block 3 of Augusta Ranch Subdivision may become members of the corporation at a later date, if the current owner, Aviara, Inc. elects to subject those lots to the provisions of the Declaration of Restrictions for Augusta Ranch Subdivision.

Co-owners, or joint owners of a lot or unit shall be deemed to be one member for the purposes of voting and assessment.

3. **Annual Meeting.** The annual meeting of the members for election of Directors, approval of an annual budget, and the transaction of such other business as may properly come before them shall be held at the principal office of this corporation or at such other place that shall be set forth in the Notice of meeting. The annual meeting shall be held on the first Monday of October 2003 at 7:00 o'clock P. M. and on the first Monday of October of each and every year thereafter.



4. **Notice of Annual Meeting.** The Secretary-treasurer of this corporation shall give written notice stating the place, day and hour of the meeting by delivering the same not less than ten (10) days prior to the date of the meeting, if notice is personally delivered, or not less than thirty (30) days, nor more than fifty (50) days before the date of the meeting, if notice is delivered by mail, to each member of record entitled to vote at such meeting. The notice shall be deemed delivered when deposited in the United States mail addressed to the member at the member's address as it appears on records of the corporation with postage prepaid thereon.

5. **Special Meeting.** Special meetings of the Members may be called by the Board of Directors or by not less than twenty-five percent (25%) of all the members entitled to vote at the meeting. Notice of said special meeting shall be given in the same manner as notice for the annual meeting as outlined in Section 4 above; provided, that the notice, in addition to all other requirements, must state the purpose or purposes for which the meeting is called. No business other than that specified in the Notice of Meeting shall be transacted at any such special meeting.

6. **Quorum of Members.** A majority of the members entitled to vote represented in person or by proxy shall constitute a quorum at a meeting of members. The members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum. If a quorum is present, the affirmative vote of the majority of members represented at the meeting and entitled to vote on the subject matter shall be the act of the members unless the vote of a greater number is required by the Articles of Incorporation, these Bylaws, or the Declaration of Restrictions for Augusta Ranch. Approval of an increase in regular annual assessments which is more than 10% greater than assessments for the prior year, and approval of special assessments shall require an affirmative vote of 51% of the members, unless the developers of the subdivision construct a Community Center.

If a meeting cannot be organized because a quorum is not present, those present may adjourn the meeting from time to time until a quorum is present at which time any business may be transacted that could have been transacted at the meeting as originally called.

7. **Voting.** Each member shall be entitled to one (1) vote. For voting purposes, co-owners of a single lot or unit shall be considered to be a single member, with one vote. A member may vote either in person or by proxy properly executed. At each election for directors, every member entitled to vote at such election shall have the right to vote in person or by proxy duly executed for as many persons as there are directors to be elected.



8. **Proxies.** Every proxy must be dated and signed by the member, and given to the Secretary/Treasurer before or at the time of the meeting. No proxy shall be valid after the expiration of eleven (11) months from the date of its execution. Every proxy shall be revocable by the member executing it.

9. **Order of Business.** The order of business at all meetings of the members shall be as follows:

- (a) Proof of notice of meeting or waiver of notice.
- (b) Reading of minutes of preceding meeting.
- (c) Reports.
- (d) Business.

10. **Informal Action.** Resolutions required or permitted to be approved by members may be approved without a meeting of members if the written resolution is signed by at least 51% of the members entitled to vote, and filed with the corporate records.

BOARD OF DIRECTORS

11. **Directors.** The Corporation shall be governed by a board of five persons, all of whom shall be members of the Corporation, who shall be elected by majority vote of the members present at the annual meeting. The Directors shall serve without compensation.

12. **Term.** At the first annual meeting of the Corporation, five Directors shall be elected. The term of two of the Directors shall be fixed for one year. The term of three of the Directors shall be fixed at two years. At the expiration of the initial term of each Director, an election shall be held; all successor Directors shall serve two-year terms. A Director may be re-elected to successive terms.

13. **Initial Directors.** Until the first annual meeting, DOUG DAHLBERG, DENNIS RUE, LINDA BUSCHER, TRENT BUSCHER and DENNIS BUSCHER shall serve as Directors.

14. **Powers and duties of Directors.** The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Corporation, and may do all acts and things as are not by law, by these Bylaws or by the Declaration of Restrictions of Augusta Ranch, directed to be exercised and done by the members.

- (a) The Directors shall have the power to contract for improvements to, and maintenance of the perimeter fence and wall, walkway and easement, located on the West side of August Park.
- (b) The Board shall have the power to levy and collect regular annual assessments.



Insurance ?

- (c) The Board shall have the power to levy and collect special assessments approved by the members.
- (d) The Board shall prepare an annual budget and obtain contractors' bids for insurance, improvements and maintenance of the perimeter fence or wall, walkway and easement, located on the west side of Augusta Ranch Subdivision.
- (e) The Board shall have the authority to take appropriate legal action to collect delinquent assessments, to file a lien against any lot having delinquent assessments, and to levy penalties and interest charged in accordance with the Declaration of Restrictions of Augusta Ranch.
- (f) The Board shall have the power to enter into and carry out contracts as necessary to its duties herein.
- (g) The Board shall have the power to establish a bank account for the Corporation and to keep records in accordance with common accounting procedures.
- (h) The Board shall have the power to employ and pay a Secretary-Treasurer.

15. **Removal of Directors.** Any Director may be removed for good cause by a vote of a majority of the members entitled to vote, at any regular or special meeting of the Corporation called for that purpose. In the event of such removal, a successor may then and there be elected to fill the vacancy thus created.

16. **Vacancies in Board of Directors.** Vacancies in the Board of Directors caused by any reason other than the removal of a Director by vote of the members, shall be filled by a vote of the majority of the remaining Directors, and each person so selected shall serve until the next annual meeting of the Corporation, at which time the members shall elect a successor to fill out the balance of the unexpired term.

17. **Regular Meetings.** Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the Directors, but at least one such meeting shall be held during each fiscal year. Notice of such regular meetings of the Board of Directors shall be given to each Director, personally or by mail, telephone or facimile at least three days prior to the date of such meeting.

18. **Special Meetings.** Special meetings of the Board of Directors may be called by the President on three days notice to each Director, given personally or by mail, telephone or facimile which notice shall state the time, date, place and purpose of the meeting.

19. **Quorum.** A quorum of the Board for transaction of business at any meeting shall be a majority of the Directors.

20. **Proxies.** Only directors will be allowed an official vote. No Proxies shall be



allowed under any circumstances.

OFFICERS

21. **Designation.** The officers of this Corporation shall be a President, a Vice-President and a Secretary/Treasurer.

22. **Election and Term of Officers.** The officers shall be elected by the Board of Directors, for a one year term. Officers may be re-elected for successive terms. The President and Vice President shall be members of the Corporation; the Secretary-Treasurer need not be a member of the Corporation.

23. **Payment of Officers.** The President and Vice-President shall serve without salary; the Secretary/Treasurer may be paid a reasonable salary, as determined by the Board.

24. **Removal of Officers.** Any officer may be removed at any time for cause by vote of a majority of the Directors then in office.

25. **Filling Vacancies.** A vacancy in any office because of death, resignation, removal, disqualification, or otherwise, may be filled by the Board of Directors for the unexpired portion of the term.

26. **President.** The President shall be the chief executive officer of this Corporation and shall, subject to the control of the Board of Directors, have general supervision, direction, and control of the affairs of this Corporation. The President shall preside at all meetings of the Board of Directors and of the members.

27. **Vice-President.** In the absence or disability of the President, the Vice-President shall perform all the duties of the President, and when so acting shall have all the powers of, and be subject to, all the restrictions upon the President.

28. **Secretary/Treasurer.** The Secretary/Treasurer shall keep the minutes of every meeting held and conduct such correspondence as the Board deems necessary. The Secretary/Treasurer shall have the care and custody of and be responsible for all funds and securities of this Corporation and shall deposit such funds and securities in the name of this Corporation in such bank or safe deposit companies as the Board of Directors may designate and shall have authority to pay out and dispose of all orders for payment of money under the direction of the President or the Board of Directors. The Secretary/Treasurer shall keep at the principal office of this Corporation accurate books of account of all its business and transactions and shall at all reasonable hours exhibit books and accounts to any Director or Member of this Corporation, shall render a report of the condition of the finances of this Corporation at each regular meeting of the Board of Directors and regular meeting of members, and shall perform all duties incident to the office of Secretary/Treasurer.



CONTRACTS, CHECKS, DEPOSITS AND FUNDS

29. **Contracts and Instruments.** The President or Vice-President shall sign and approve all contracts and instruments on behalf of this Corporation, after authorization has been granted and approval obtained from a majority of the Board of Directors.

30. **Checks and Drafts.** All checks, drafts, or other orders for payment of money, notes, or other evidence of indebtedness, issued in the name of or payable to this Corporation, shall be signed or endorsed by such person or persons and in such manner as, from time to time, shall be determined by resolution of the Board of Directors. In the absence of such determination by the Board of Directors, such instruments shall be signed by any two (2) of the officers of this Corporation.

31. **Depository.** All funds of this Corporation shall be deposited from time to time to the credit of this Corporation in such banks, trust companies, or other depositories as the Board of Directors may select.

MISCELLANEOUS PROVISIONS

32. **Waiver of Notice.** Whenever any notice is required to be given under the provisions of law or under the provisions of the Articles of Incorporation or the Bylaws of this Corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

33. **Amendment of Bylaws.** These bylaws may be altered, amended, or repealed and new Bylaws may be adopted by three-quarters (3/4) of the members entitled to vote, at any regular meeting or at any special meeting of this corporation.

34. **Transfer of Membership.** One membership is attached to each of the lots and units within August Ranch; a membership shall not be transferable except upon transfer of said lot or unit. Said membership is appurtenant to and runs with the lot or unit.

35. **Expulsion of Members.** Members may not be expelled from the Corporation and their voting rights cannot be canceled. No member may withdraw from the Corporation so long as that member owns a lot or unit in August Ranch Subdivision.

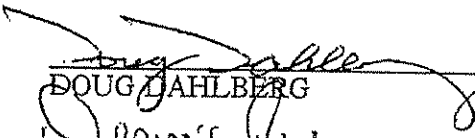
3. **Reimbursement of Costs and Expenses.** All officers and directors shall be reimbursed their costs and expenses directly incurred in work performed in furthering the purposes of this Corporation.

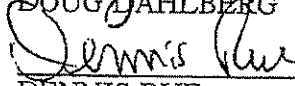
36. **Dissolution.** The Corporation shall be dissolved only if maintenance of the fence, walkway and easement, located on the West perimeter of Augusta Ranch, is assumed by some other entity. In the event of dissolution of the Corporation, the funds of the Association shall be divided equally among its members, after payment of all debts




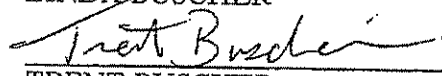
of the corporation.

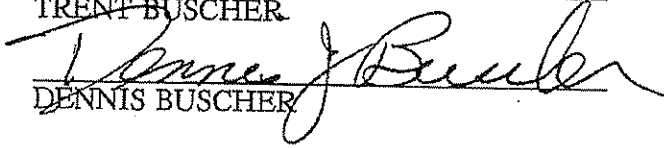
BYLAWS DATED Nov 1st, 2002.


DOUG DAHLBERG


DENNIS RUE


LINDA BUSCHER


TRENT BUSCHER


DENNIS BUSCHER

FIRST AMENDMENT TO THE
DECLARATION OF RESTRICTIONS FOR
AUGUSTA RANCH SUBDIVISION

AVIARA, INC., (Developer) being the sole owner of more than 75% of the following described lots, and BUSCHER DEVELOPMENT & CONSTRUCTION, INC., successor in interest to Buscher Development, Inc., do hereby amend the Declaration of Restrictions for Augusta Ranch Subdivision recorded March 25, 2003, under Document 3221335, records of Yellowstone County, Montana, as follows:

1. Clause No. 22(a) is hereby deleted in its entirety and replaced with the following:
 22. Setbacks.
 - (a) No residence or other structure shall be located on any of the lots so that any part of such structure, other than entrance vestibules, awnings or minor decorative fixtures, is nearer than 20 feet from the front line of the lot on which the structure is located. Setbacks from any street for a structure situated on a corner lot shall comply with the City of Billings Zoning Ordinances. The Architectural Review Committee shall have authority, in its sole discretion, to increase the front setback requirement to up to 25 feet from a front lot line.
2. Clause 26 is hereby deleted in its entirety and replaced with the following:
26. Fences may be constructed only of metal, masonry or beige vinyl, or combinations of these materials, except that dog runs may be fenced with chain link fence. Fences must be maintained by the lot owner in an attractive condition.

Augusta Ranch Subdivision is located on the following described real property, located in Yellowstone County, Montana:

- | | |
|----------|--|
| Block 1: | Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15. |
| Block 2: | Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 13. |
| Block 3: | Lot 4. |
| Block 4: | Lot 1. |
| Block 5: | Lots 1 and 2. |
| Block 6: | Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22. |

of Augusta Ranch Estates Subdivision, (hereinafter Augusta Ranch), in the City of Billings, Yellowstone County, Montana, according to the official plat on file and of record in the office of the Clerk and Recorder of said County, under Document No. 3211050.



In all other respects, the Declaration and Restrictions for Augusta Ranch Subdivision described above, shall remain as written.

DATED this 19 day of OCTOBER, 2004.

AVIARA, INC.

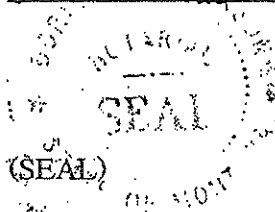
By: Dennis J. Buscher
DENNIS J. BUSCHER President

BUSCHER DEVELOPMENT & CONSTRUCTION, INC.

By: Dennis J. Buscher
DENNIS J. BUSCHER President

STATE OF MONTANA)
: ss.
County of Yellowstone)

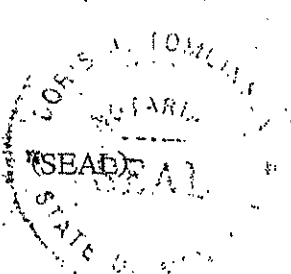
This instrument was acknowledged before me on October 19, 2004, by Dennis J. Buscher, President of AVIARA, INC.



Doris J. Tomlinson
Printed Name: Doris J. Tomlinson
Notary Public for the State of Montana
Residing at Billings, MT
My Commission Expires 7-30, 2008

STATE OF MONTANA)
: ss.
County of Yellowstone)

This instrument was acknowledged before me on October 18, 2004, by Dennis J. Buscher, President of BUSCHER DEVELOPMENT & CONSTRUCTION, INC.



Doris J. Tomlinson
Printed Name: Doris J. Tomlinson
Notary Public for the State of Montana
Residing at Billings, MT
My Commission Expires 7-30, 2008



Return to:
Pedersen & Hardy, P.C.
1001 S. 24th St. W., Suite 110
Billings, MT 59102
File No. 31087

**SECOND AMENDMENT TO THE
DECLARATION OF RESTRICTIONS FOR
AUGUSTA RANCH SUBDIVISION**

AVIARA, INC., (Developer), does hereby amend the Declaration of Restrictions for Augusta Ranch Subdivision recorded March 25, 2003, under Document 3221335, records of Yellowstone County, Montana, and the previous Amendment to that Declaration, to add the following described real property to the provisions of said Declaration:

Lots 1 and 2, Block 3, of Augusta Ranch Estates Subdivision, in the City of Billings, Yellowstone County, Montana, according to the official plat on file and of record in the office of the Clerk and Recorder of said County, under Document No. 3211050.

Upon recordation of this Amendment in the office of the Clerk and Recorder of Yellowstone County, Montana, all of the real property described above shall be subject to the provisions of the Declaration, which provisions shall run with the land and be binding upon the owners of each of said lots, their heirs, successors and assigns, as provided in the Declaration.

In all other respects, the Declaration of Restrictions for Augusta Ranch Subdivision described above, and all Amendments thereto, shall remain as written.

This Amendment is recorded pursuant to the provisions of the original Declaration.

Augusta Ranch Subdivision is now located on the following described real property, located in Yellowstone County, Montana:

- Block 1: Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15.
- Block 2: Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 13.
- Block 3: Lots 1, 2 and 4.
- Block 4: Lot 1.



Block 5: Lots 1 and 2.
Block 6: Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22.

of Augusta Ranch Estates Subdivision, (hereinafter Augusta Ranch), in the City of Billings, Yellowstone County, Montana, according to the official plat on file and of record in the office of the Clerk and Recorder of said County, under Document No. 3211050.

DATED this 23rd day of October, 2007.

AVIARA, INC.

By: Dennis J. Buscher
Its President

By: Linda Buscher
Its Secretary

STATE OF MONTANA)
County of Yellowstone) ss.

This instrument was acknowledged before me on October 23, 2007, by Dennis J. Buscher and Linda Buscher, as officers of AVIARA, INC.

Cathy Hanser

Printed Name: Cathy Hanser
Notary Public for the State of Montana
Residing at Billings, mt
My Commission Expires 03-02, 2008



CATHY HANSER
NOTARY PUBLIC for the State of Montana
Residing at Billings, Montana
My Commission Expires March 2, 2008