

Pinon Hills

Declaration of Protective Covenants

This Declaration of Protective Covenants (the “Declaration”) is made as of the _____ day of _____, 2006, by McClellan Bros. Investments, LLC (herein after called the “Declarant”). The Declarant is owner of the Pinon Hills subdivision as shown on the attached plat and located in the SW ¼ of Section 3 and SE ¼ of Section 4 of Township 37 North, Range 16 West, N.M.P.M., in Montezuma County, Colorado.

Whereas Declarant desires to restrict and impose certain protective covenants on Phase III, Lots 39 – 46, to ensure harmonious relationships among land users, to protect and enhance real property values, to conserve the natural beauty of the environment and to protect it’s character for the benefit of all present and successive owners of any or all of said tracts. Declarant does hereby impose the following covenants and restrictions, to wit:

Covenants

Access Roads – Declarant is reserving a 60-foot wide easement for general ingress and egress to each Lot in Phase III and all future development or property owned by McClellan Bros. Investments, LLC, not served by County roads. This easement shall be used for public utilities in addition to Lot Owner ingress and egress. The easement shall be *generally* 30-feet on each side of centerline of the access roads or as shown on attached plat for Pinon Hills. When all roads and underground utilities are in place, Declarant shall gravel the common roads within the subdivision.

Entrances – Declarant reserves the right to construct improved entrances at current and future entrance locations within the 60-foot wide access easement. Entrances may be constructed of log, stone, adobe, steel or any combination thereof. Using these same materials, individual Lot Owners can also construct entrances to their Lot. Declarant reserves the right to place signage at any entrance, or location within the 60-foot wide access easement, advertising the Pinon Hills subdivision/individual Lots until all Lots have been sold.

Obstructions on Common Access Roads – No gates, fences or obstructions will be placed across any Common Access Road within Pinon Hills other than possibly at development entrances.

Drainage – At the location where private access roads connect to the subdivision access roads as recorded on the plat of Pinon Hills, a drainage culvert of not less than 12 inches in diameter and 20 feet in length shall be installed at the Lot Owner’s expense. Culvert shall be installed during construction of Lot Owner’s private access. Private entrances shall also be constructed with a crown and ditches such that water does not drain onto common access roads.

Bridle Path/Pedestrian Trail – Declarant is reserving a 20-foot wide trail easement around the perimeter of Pinon Hills as shown on the attached plat. One crossover trail easement for Phase III, 40-foot wide, is also reserved as shown on attached plat. Trail construction is planned to be completed by Fall 2007. The trail will be approximately 4' in width when complete. Along the southeast boundary of Pinon Hills, this trail shall reside within the 60-foot wide access easement. This easement shall be used for pedestrian, horseback and bicycle travel only. No motorized vehicles shall be allowed on this easement unless required for utility installation/maintenance or trail maintenance.

Utilities – Declarant shall install the primary distribution lines for water, power and phone utilities within Pinon Hills. These Primary distribution lines shall be located within the 60-foot wide access road easements or utility easements or as otherwise shown on attached plat. Utilities shall not extend into each individual Lot unless otherwise shown on plat.

A utility easement of 20 feet is reserved along perimeter of Pinon Hills, coinciding with the trail easement. A 100-foot wide utility easement also coincides with the crossover trail as shown on the attached plat. All new utilities within the common road access easement, along Lot lines as well as across any Lot shall be underground with the exception of any pre-existing utilities bordering County roads or any pre-existing overhead utilities. The owners of each Lot shall contact the various utility companies and at their own expense, arrange for the connection of utilities from the primary distribution lines to their homesite or associated outbuildings.

Easements – No gates, fences or obstructions shall be placed across said trail, utility easement or emergency egress easement nor shall any structure, material, equipment or refuse be placed on said easements.

Suitable Building Areas – Suitable building areas have been identified for each Lot as shown on the attached plat. These building areas are designed to be less restrictive than typical building envelopes and are defined as the area between setbacks and potentially unstable slopes. Lot Owners shall avoid building any structure or livestock turnout area in areas identified as potentially unstable slopes. Structures may be built on potentially unstable slopes *only* if they are engineered by a Colorado licensed Professional Engineer.

Individual Lot Owners shall have a soils analysis performed at their proposed homesite to determine if an engineered foundation is required as expansive soils are known to exist in the area. No permanent structures shall be built on the pipeline easement identified on the plat.

Dwellings per Lot – No more than one primary residence and accompanying outbuildings may be allowed per Lot. Outbuildings are considered as barns, stables, sheds, detached garages or other similar structures.

Setback Requirements – No residence or privacy fencing shall be built within 50 feet of any Lot line. No outbuilding or fenced livestock turnout area shall be built within 50 feet of any Lot line.

Dwelling Size Requirements – Primary dwellings shall be a minimum of 1500 square-feet not including garages, decks or covered porches. No structure, whether home or outbuilding, shall be built exceeding 35 feet in height from ground level.

Defensible Space – Using the guidelines defined in Colorado State University Cooperative Extension, publication No. 6.302, “Creating Wildfire-Defensible Zones,” Declarant shall create a Zone 3 defensible space on the individual Lots. Before occupancy of residences and outbuildings, Lot Owners shall be responsible for development and maintenance of Zone 1 and Zone 2 defensible spaces around those structures.

Residential Construction Requirements – All construction upon the property shall be new construction. No previously erected building, structure, or improvement shall be moved to or placed upon any Lot. All primary residences must be built on a permanent foundation. All conventional construction methods are permitted. Frame, brick, log, stone, stucco, steel and adobe structures are all acceptable. Modular homes, mobile homes, HUD homes and homes of an “A” frame design will not be permitted. Galvanized paneling shall not be used on the sides or roof of residences or any other structure unless it is acidized.

Approval of Plans – To ensure Lot development proceeds in accordance with these covenants and property values are protected, Lot Owner agrees to provide a site plan (indicates location of structures and fences with respect to Lot boundary) and structure plan (house and/or outbuilding plans) before starting construction of any of the aforementioned items. Each Lot Owner agrees that no residence or other structure shall be placed upon any Lot unless and until the plans and specifications have been approved in writing by the Declarant. If the Declarant fails to approve/disapprove the site/structure plans within 15 days after written request thereof, then such approval shall not be required provided that all Covenants contained herein are adhered to.

Fencing – Barbed wire fencing shall not be allowed around the perimeter of any Lot. Perimeter fencing shall not exceed 4 feet in height and shall not be of a solid, private nature. Lot Owners are welcome to share the expense of lot line fencing along common boundaries.

As per the Montezuma County Land Use Code, Section 5103.2 C, it is the Lot Owner’s responsibility to maintain fences which separate the subdivision from adjacent agricultural land, stock drives or public roads used as stock drives.

Sewer Systems – Each Lot Owner is responsible for developing sewer systems for their Lot such as septic tanks and leach fields. Per Montezuma County requirements, individual Lot Owners shall have a percolation and/or soils test performed to determine the leach field requirements. Until further notice, Montezuma County requires that all septic systems shall be engineered by a Colorado licensed Professional Engineer.

Temporary Residence – A camp trailer, motor home or pick-up camper may occupy a Lot for recreational purposes only, and shall not become a permanent dwelling nor be left on Lot when owner vacates property unless stored in a closed garage, barn or other permanent structure. Occupancy of camp trailers, motor homes or pick-up campers shall not exceed 30 days per year. Mobile homes or construction trailers may be temporarily placed on a Lot for a period not to exceed 12-months during construction of a permanent dwelling and only after obtaining a building permit.

Outdoor Lighting – All outdoor lighting shall illuminate only the direct premises on which it is located and not neighboring properties.

Parking – No parking upon common access roadways shall be allowed within Pinon Hills.

Use – No commercial business or trade shall be engaged in, or upon any Lot (Lot AA excepted). Certain home occupations permitted by Montezuma County Zoning Ordinances may be maintained within the main dwelling although no commercial signage/advertising will be allowed anywhere within Pinon Hills (Lot AA excepted). It is expected that Lot AA will have an alternate access directly from Hwy 184 eliminating any impacts to Pinon Hills Lots 1 – 46.

Restriction of Future Subdivision – No Lot may be further subdivided into less than that shown on the Pinon Hills plat.

Property Maintenance – Owners are responsible for the appearance and maintenance of their Lot. All Lots must be kept neat and have an acceptable appearance. No accumulation of trash, junk, waste materials or weeds is allowed. Lot Owners shall be responsible for removal of all noxious weeds from their Lot and comply with Montezuma County noxious weed control regulations. All Lot Owners will be responsible for removal of their own refuse.

Refuse and Junk Prohibited – No Lot Owner shall dump refuse or garbage on any Lot nor shall a Lot Owner build, maintain, operate or construct, or in any way cause to be placed within 50 feet of any common access road or Lot lines any structure or condition that will cause the accumulation or existence of animal waste or a condition causing an obnoxious odor. Any motorized vehicle or watercraft that is inoperable for a period of longer than 30 days shall be stored in a closed garage, barn or other permanent structure.

Domestic Animals – Domestic animals (cats and dogs) may be maintained on any Lot provided they are confined to that Lot and the pens, corrals, barns, sheds or other enclosures are maintained in a clean, orderly and sanitary condition. To protect the abundant wildlife in the area, no more than two dogs are allowed per Lot and they must be kept in a fenced area that meets 50-foot setback requirements (including fencing) and avoids potentially unstable slopes located outside the suitable building area. Fenced dog enclosures shall not exceed 5,000 square feet. In the event any animal becomes obnoxious, troublesome, dangerous, excessively noisy or destructive to wildlife, livestock or fences or if the owner is unable to or fails to confine the animal to their Lot, the animal shall be removed at the owner's expense. No restriction shall be placed upon ownership of any *indoor* household pets provided they are not kept, bred or maintained for any commercial purposes.

Livestock – Up to two horses/mules are allowed per Lot. To prevent overgrazing, loss of wildlife habitat or erosion of unstable slopes, livestock must be kept within a fenced stable/turnout area that meets 50-foot setback requirements (including fencing) and avoids potentially unstable slopes located outside the suitable building area. Fenced turnout areas shall not exceed 5,000 square feet.

Regarding livestock other than horses/mules, no Lot Owner will be permitted to operate a commercial livestock operation on any Lot except for youth projects such as 4-H or Future Farmers of America. Animals identified as youth 4-H or F.F.A. projects are allowed as long as the penned area of such animals are maintained in a clean, orderly and sanitary condition and kept within a fenced area that meets setback requirements (including fencing) and avoids potentially unstable slopes.

Homeowners Association - A Homeowners Association will be formed and known as the "Pinon Hills Homeowners Association." Each Lot Owner agrees to become a member of said association. The Declarant shall appoint one President and one Secretary/Treasurer. The initial President shall be Casey McClellan and the initial Secretary/Treasurer shall be Kelly McClellan. Future officers shall be elected at the annual meeting of Lot Owners which will be scheduled by the President. All matters in regard to the subdivision will be covered at this meeting. Homeowner association fees will be \$150.00 per lot per year. The fee will be billed in the month of January of each year and placed in an account set up for the said association. The account will be used for snow removal, repair and maintenance of the access roads within the subdivision. The account will be maintained by the Secretary/Treasurer.

Should any owner fail to pay required fees within 30 days, the Homeowners Association shall within 60 days thereafter cause to be prepared a Lien statement, giving the name of the owner, their address, legal description of the Lot, amount of unpaid bill or in the alternative, the Homeowners Association may commence Court action for collection of said fees. Said Lien Statement shall be recorded in the office of the County Clerk and Recorder of Montezuma County, Colorado. A copy of the recorded Lien Statement shall be mailed or delivered to the owner of said Lot within 10 days after return of Lien Statement from said County Clerk and Recorder.

Declaration Duration and Terms - All restrictions imposed by this Declaration shall run with the land and attach to the land and to each Lot thereof, and shall be binding upon all present and successive owners, heirs or assigns thereof until _____, 2016 at which time said restrictions shall be automatically extended for successive periods of ten (10) years each, unless by a vote of a majority of the then owners of said Lots, it is agreed to change said restrictions in whole or in part.

If an owner of one or more tracts within Pinon Hills subdivision should violate or cause to be violated, any of the covenants herein, then any one or more of the owners of an interest in a Lot within said subdivision shall have the right to call to the attention of the violator, the alleged breach, and attempt to resolve the matter. Any party to the matter shall have the right to seek relief of *irresolvable* matters in a Court of jurisdiction within the County of Montezuma, Colorado.

The invalidation of any one or more of these covenants by any Court of competent jurisdiction shall not invalidate the remainder and they shall remain in full force and effect.

