

ID 500  
9/25/89

STATE OF NEW MEXICO

COUNTY OF OTERO

BK 676 PG 752

DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS ("Declaration") is made by C. Michael Shyne ("Declarant").

BACKGROUND STATEMENT

Motel 6 Operating L. P., a Delaware limited partnership ("Motel 6") has this day sold to Declarant certain real property located in Otero County, New Mexico described as follows:

Lots 1, 2, and 4, in Motel 6 Subdivision, Alamogordo, Otero County, New Mexico.

Said property hereinafter referred to as "Real Property". Motel 6 has retained adjoining property upon which it operates a motel facility, together with parking therefore ("Motel Property").

To induce Motel 6 to sell the Real Property to Declarant, Declarant hereby agrees that the Real Property and any improvements constructed or to be constructed thereon, is hereby made subject to the provisions of this Declaration and shall be held, sold, transferred, conveyed, used, occupied and mortgaged or otherwise encumbered subject to the covenants, conditions, and restrictions hereinafter set forth, which are a burden on the Real Property, are for the benefit of the Motel Property and for the purpose of protecting the value and desirability of the Motel Property and the owners of the Real Property, and which shall run with the title to the Real Property, shall be binding on all persons having any right, title or interest in all or any portion of the Real Property, their respective heirs, legal representatives, successors, successors in title, and assigns, and shall inure to the benefit of each and every owner and occupant of all or any portion of the Motel Property, their respective heirs, legal representatives, successors, successors in title, and assigns.

CERTIFICATION ON FILE AT THIS AGENCY. THESE DOCUMENTS ARE ROUTINELY MICROFILMED AS A NECESSARY OPERATION IN THE GENERATION OF AN INVOLVATE DOCUMENT FILE.

9-26-89  
DATE

Roller Sline  
CAMERA OPERATOR

99-13  
ROLL NO.

CERTIFICATION  
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ARTICLE I. USE RESTRICTIONS AND RULES.

1.01 Nuisance. It shall be the responsibility of Declarant and if the Real Property is sold, to the Declarant's successor in interest, to prevent the development of any unclean, unhealthy, unsightly or unkempt condition on the Real Property. The Real Property shall not be used for the storage of any item or thing that will cause the Real Property to be in an unclean or untidy condition or that will be obnoxious to the eye. No speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security and life safety purposes, shall be located, installed or maintained upon the exterior or any structure on the Real Property.

1.02 Use Restrictions. Under no circumstances shall the Real Property be used for the following: massage parlor, topless or nude dancing; adult book store; nude modeling facilities or any sexually oriented "adult" entertainment facility. Video rentals for off-premises viewing are not restricted.

Declarant further agrees not to construct or operate any hotel, motel or lodging facility on the Real Property which charges less than \$15.00 per day more than the then single rate charged by the motel operating on the Motel Property.

Declarant further agrees not to construct any structure exceeding 28 feet in height on Lot 4 of the Real Property. Free standing signs are exempt from the height restriction.

1.03 Property Maintenance: Repair of Buildings. The Real Property and any buildings or other improvements placed thereon shall at all times be maintained in accordance with all health, fire, police and governmental requirements and in such a manner as to prevent their becoming unsightly, i.e., by reason of unattractive growth or the accumulation of rubbish or debris thereon. No building or structure shall be permitted to fall into disrepair, and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished.

ARTICLE II - DURATION, MODIFICATION AND REPEAL.

2.01 Duration of Protective Covenants. The Restrictive Covenants contained in this Declaration shall continue and remain in full force and effect at all times with respect to the Real Property and each part thereof; for a period beginning with the recordation of this Declaration, and ending twenty (20) years thereafter or until such time as the Motel Property is no longer used for Motel uses, whichever occurs last. However, the lodging facility restriction and height restriction contained in Par. 1.02 shall terminate when this motel property ceases to be used for motel purposes.

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Rollin Sims  
CAMERA OPERATOR

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2.02 Termination and Modification. This Declaration, or any other provisions hereof, or any covenant contained herein, may be extended, modified, or amended only with the prior written consent of Motel 6, joined by Declarant, which consent may be withheld in the sole, absolute and uncontrolled discretion of Motel 6 and the Declarant. No such termination, extension, modification or amendment by Declarant shall be effective until a written instrument setting forth the terms thereof has been executed and recorded.

ARTICLE III - ENFORCEMENT.

3.01 Abatement and Suit.

A. Preventive Remedies. Motel 6 and its successors and assigns may proceed at law or in equity to prevent the violation of the Restrictive Covenants contained in this Declaration.

B. Cumulative Remedies. The remedies herein specified are cumulative, and this specification shall not be deemed to preclude any aggrieved person's resort to any other remedy at law, in equity, or under any statute.

3.02 Violation Deemed to Constitute a Nuisance. The results of every action or omission whereby the Restrictive Covenants contained in this Declaration are violated in whole or in part is hereby declared to be and constitute a nuisance, and every remedy allowed by law or equity against the Declarant or any owner or occupant of the Real Property shall be applicable in respect to every such result and may be exercised by Motel 6, its successors and assigns and by any present or future owner of part of the Real Property, to whose benefit these Restrictive Covenants inure.

3.03 Attorneys' Fees. In any legal or equitable proceeding to enforce or restrain the violation of the Restrictive Covenants contained in this Declaration, the losing party or parties shall pay the reasonable attorneys' fees of the prevailing party or parties.

3.04 Failure to Enforce Not a Waiver of Rights. No delay or failure on the part of an aggrieved party to invoke any available remedy in respect to a violation of any of the Restrictive Covenants contained in this Declaration shall be held to be a waiver by that party of (or an estoppel of that party to assert) any right available to him upon the recurrence of continuance of said violation of the occurrence of a

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different violation, nor shall there be construed to be a duty upon Motel 6 to take any action to enforce the Restrictive Covenants contained in this Declaration.

3.05 Partial Invalidity. If any provision of this Declaration or the application thereof to the Real Property or the owner or occupant thereof is declared to be invalid or unenforceable, the remainder of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties constituting Declarant have executed this Declaration under seal on this 25th day of September 1989.

DECLARANT

C. Michael Shyne  
C. Michael Shyne

STATE OF NEW MEXICO  
COUNTY OF OTERO

This instrument was acknowledged before me on the 25th day of September, 1989, by C. Michael Shyne.

Paula J. Dardin  
Notary Public in and for the  
of New Mexico

Notary's name (printed):  
PAULA J. DARDIN

Notary's Commission Expires:  
Oct 5, 1992

-4-

STATE OF NEW MEXICO, County of Otero, ss, Filed for record in my office this 25  
day of Sept, 1989, at 3:55 o'clock P, and duly recorded in Book 676  
Page 752 of the Records of said county. Darin by Mary D. Quastan  
County Clerk Deputy

# 8141

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ADDENDUM TO DECLARATION OF RESTRICTIVE COVENANTS

The following covenant is hereby added to, and merges with that particular "Declaration of Restrictive Covenants" Recorded in Book 676, Pages 752 to 755, of the Records of the County Clerk of Otero County, New Mexico. Said covenants cover the following real estate:

Lots 1, 2 and 4, in Motel 6 Subdivision Alamogordo, Otero County, New Mexico.

The addition to said covenants:

It is the responsibility of the property owner at the time improvements are made to each lot or subdivision of said lot to construct sidewalks in accordance with the then-in-force requirements and specifications of the City of Alamogordo, New Mexico.

IN WITNESS WHEREOF, the parties constituted Declarant have executed this declaration and under seal on this 25th day of September, 1989.

DECLARANT

C. Michael Shyne  
C. Michael Shyne

STATE OF NEW MEXICO )  
 ) ss.  
COUNTY OF OTERO )

The foregoing instrument was acknowledged before me the 25th day of September, 1989, by C. Michael Shyne.

MY COMMISSION EXPIRES:  
August 11, 1990

Juan P. Hernandez  
Notary Public

COUNTY CLERK  
OTERO COUNTY  
NEW MEXICO

STATE OF NEW MEXICO } S.S.  
OTERO COUNTY }  
FILED FOR RECORD IN MY OFFICE  
This 25 day of Sept 19 89  
At 3:55 o'clock P. M and duly recorded  
in Book No. 676 Page 756  
The records of Otero County, New Mexico  
By Laura J. Duman  
County Clerk Otero County, New Mexico  
By Mary D. Duman Deputy

#8142