

**RESTRICTIVE COVENANTS AND PROTECTIVE EASEMENTS**  
**DESERT WILLOWS SUBDIVISION, AN ADDITION TO**  
**THE CITY OF ALAMOGORDO, NEW MEXICO**

**DECLARATION**

ROCKET ENTERTAINMENT, INC., A New Mexico Corporation, is the owner of real estate within the City of Alamogordo, Otero County, New Mexico, particularly described as follows:

A tract of land in the NW 1/4 of Section 11, T17, R9E, N.M.P.M., Otero County, New Mexico, more particularly described by metes and bounds as follows: Starting at the West 1/4 corner of said Section 11, a brass cap found in place, thence N 00° 03' 57" E., 1470.2 feet, coincident with the West Right-of-way Line of Airport Road, thence S. 89° 43' 38" E., 100.00 feet, to the Southwest corner of Desert Villa Estates Phase 1, Alamogordo, Otero County, New Mexico and a place of beginning of the tract of land herein described, thence continuing S. 89° 43' 38" E., 2302.52 feet, coincident with the South boundary lines of Desert Villa Phases 1, 2, and 3, thence S.00° 16' 22" W., 106.04 feet, thence S. 89° 47' 54" E., 250.3 feet to a point on the West Right-of-way line of Collins Avenue, thence S. 00° 09' 09" E., 654.68 feet, coincident with the West Right-of-way line of Collins Avenue, thence N. 89° 59' 04" W., 340.14 feet, coincident with the North Right-of-way line of Wright Avenue, thence S. 00° 09' 09" E., 327.97 feet, thence N. 89° 57' 00" W., 1586.13 feet, thence N. 00° 03' 00" E., 770.94 feet, thence N. 89° 47' 54" W., 629.67 feet, to a point on the East Right-of-way line of Airport Road, thence N. 00° 03' 57" E., 325.9 feet, coincident with the East Right-of-way line of Airport Road, to the place of beginning and containing 49.791 acres.

WHEREAS, Rocket Entertainment, Inc. desires to impose certain restrictive covenants and mutual and reciprocal easements upon the tracts of land relating to an orderly and uniform development of the said real estate and the improvements to be placed thereon,

BE IT THEREFORE DECLARED that the following covenants, restrictions and easements are declared and imposed upon the lands and the same shall run with the land and be binding upon all parties, purchasers and owners and upon their successors, assigns, and privies and all persons claiming under or by or through them for the term of years or terms of years as herein provided.

**PART I. FULLY RESTRICTED RESIDENTIAL AREA**

The residential area covenants in Part II in their entirety shall apply to the residential lots in Desert Willows Subdivision, an addition to the City of Alamogordo, Otero County, New Mexico.

**PART II. RESIDENTIAL AREA COVENANTS**

**A. LAND USE AND BUILDING TYPE**

1. No lots shall be used except for residential purposes.
2. No residence shall be erected, altered, placed or permitted to remain on any lot other than one detached single family dwelling.

**B. MINIMUM HOME BUILDING REQUIREMENTS**

Each dwelling shall contain and conform to the following minimum home building requirements:

1. Dwelling may be site built or manufactured or modular housing. They shall conform otherwise to all requirements relating to such single family residential construction in new subdivisions as may be required by acts, statute, rule, regulation or ordinance of Federal, State and Local authorities and agencies and shall, as constructed, conform generally to the requirements of conventional or Federal, State or Local mortgage financing programs.

**C. UNLESS THE FOREGOING GENERAL STANDARD IS HIGHER THE HOMES GENERALLY SHALL INCLUDE THE FOLLOWING:**

1. Contain a minimum of 840 square feet.
2. Contain a minimum of two bedrooms.
3. Sidewall minimum ceiling height of 7 feet with center height of living room no less than 7 feet 6 inches.
4. Residential lap siding, fiber board, plywood, treated wood, brick siding, masonite or masonry.

5. Removed wheels, axles, hitch, and any running gear.
6. Permanent attachment to a foundation (i.e. proper blocking, tie downs, and perimeter skirting to be completed within thirty days).
7. Concrete driveway.
8. All patios, carports, and garages shall be poured concrete slab floors.
9. All site improvements and amenities in place and complete.
10. All utilities connected and attached in a manner acceptable to the utility company or in a manner comparable to site built housing applications.
11. The finish floor elevation shall not be greater than forty-four (44") inches above the finish ground elevation from the front (street side) elevation.
12. Manufactured or Modular homes shall meet the standards and requirements of the Architectural Control Committee and shall not be relocated upon a lot in the subdivision if they are of a manufactured year older than five (5) years of the then current year of manufacture.
13. Front yard (street side) landscaping shall be started within 30 days of the beginning of the growing season and completed with due diligence.

#### D. ARCHITECTURAL CONTROL

No building or improvement shall be erected, placed, altered or replaced on any lot until the construction plans and specifications and a site plan showing the location of the structure have been approved by the Architectural Control Committee as to quality of workmanship and materials, harmony of external design with existing and/or planned structures, and as to location with respect to topography and finish grade elevation. No fence or wall, except necessary retaining walls of minimum height, shall be erected or allowed to remain nearer the front street than the front building setback line.

On corner lots, no side fence or walls, except necessary retaining walls of minimum height shall be erected or allowed to remain nearer to the front street than the front of the dwelling, nor nearer the side street than the property line. There is no restriction as to height of fences which are erected behind the minimum setback line of the front street; except as stated or implied herein. Approval shall be as provided in Part III.

#### E. BUILDING LOCATION

No building shall be located on a lot nearer to the front lot line or nearer to the side street line than the minimum building setback lines shown on the recorded plat. In any event, no building shall be located on any lot nearer than twenty-five (25) feet to the front lot line, or nearer than fifteen (15) feet to any side street line, except that as to streets toward which houses face, no building shall be located nearer than twenty-five (25) feet to the street property lines of the said streets. No building shall be located nearer than five (5) feet to any exterior lot line except as may be permitted by City Ordinance. No dwelling shall be located on any interior lot nearer than twenty (20) feet to the rear lot line. For the purposes of this covenant, caves, steps and open porches shall not be considered as a part of the building, provided, however, that this shall not be construed to permit any portion of a building, on a lot to encroach upon another lot.

#### F. LOT AREA AND WIDTH

No dwelling shall be erected or placed on any lot having a width of less than sixty (60) feet at the minimum building setback line. Each lot shall have an area of not less than 6000 square feet.

#### G. EASEMENTS

Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible.

#### H. NUISANCES

No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

I. TEMPORARY STRUCTURES AND INITIAL OCCUPANCY OF PERMANENT RESIDENCE

No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other out-building, shall be used on any lot at any time as a residence either temporarily or permanently. Nor shall any residence be occupied initially until its completion has been approved the Architectural Committee. Landscaping shall be completed within the time limits after occupancy and after in that manner agreed to between owner and the Committee as time of completion.

J. SIGNS

No sign of any kind shall be displayed to the public view on any lot except one professional sign of not more than one (1) square foot, one (1) sign of not more than five (5) square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sales period.

K. OIL AND MINING OPERATIONS

No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted upon or in any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot.

L. LIVESTOCK AND POULTRY

No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purposes.

M. GARBAGE AND REFUSE DISPOSAL

No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage, or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

N. WATER SUPPLY

No individual water supply system shall be permitted on any lot. Water supply for every lot shall be obtained from the public water system, maintained by the City of Alamogordo, New Mexico.

O. SEWAGE DISPOSAL

No individual sewage-disposal system shall be permitted on any lot. Sewage disposal for every lot shall be by means of the public sewage disposal system, maintained by the City of Alamogordo, New Mexico.

P. SIGHT DISTANCE AT INTERSECTIONS

No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and line connecting them at points twenty-five (25) feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the street property lines extended. The same sight-line limitations shall apply on any lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight line.

**PART III. ARCHITECTURAL CONTROL COMMITTEE**

I. MEMBERSHIP - The Architectural Control Committee is composed of:

- (a) Denny F. O'Hara  
6 Camino Ranchitos  
Alamogordo, N.M. 88310

(b) Michael M. O'Hara  
1498 Challenger  
Alamogordo, N.M. 88310

(c) Patricia J. O'Hara  
1492 Challenger  
Alamogordo, N.M. 88310

A majority of the committee may designate a representative to act for it. In the event of death or resignation of any member of the committee, the remaining members shall have full authority to designate a successor. Neither the members of the committee, nor its designated representatives, shall be entitled to any compensation for services performed pursuant to this covenant. At any time, the then record owners of a majority of lots shall have the power through a duly recorded written instrument to change the membership of the committee or to withdraw from the committee or to restore to it any of its powers and duties.

2. PROCEDURE The committee's approval or disapproval as required in these covenants shall be in writing. In the event the committee, or its designated representative, fails to approve or disapprove within thirty (30) days after plans and specifications have been submitted to it, or, if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required and the related covenants shall be deemed to have been fully complied with.

**PART IV. GENERAL PROVISIONS**

1. TOLERANCE A six (6") inch tolerance by reason of mechanical variance of construction is allowed for minimum distance requirements from lot line.

2. TERM these covenants are to run with the land and shall be binding on all parties, their successors, assigns and privies and all persons claiming by, through or under them for period of thirty (30) years unless an instrument signed by a majority of the then owners of the lots has been placed of record in the County Clerk's Office, requesting amending agreeing to change the covenants in whole or in part. Votes shall be counted on the basis of one (1) vote for each lot owned.

3. ENFORCEMENT Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages.

4. SEVERABILITY Invalidation of any one of these covenants by judgment or court order or by ordinance of the City of Alamogordo, New Mexico shall in nowise affect any of the other provisions which shall be and remain in full force and effect.

5. AMENDMENT These covenants may be amended [in whole or in part] at any time an instrument signed by a majority of the owners of the lots has been recorded agreeing to [amend said covenants in whole or in part] to include additional property under the terms hereof or to exclude specifically described property from the provisions hereof. Votes shall be counted on the basis of one (1) vote for each lot owned with the subject area.

IN WITNESS WHEREOF, the said officers have caused this instrument to be executed this 21st, day of February 1995.

ROCKET ENTERTAINMENT, INC., A NEW MEXICO CORPORATION

BY PRESIDENT

*Michael M. O'Hara*

MICHAEL M. O'HARA

State of New Mexico, County of Otero

SECRETARY

*Patricia O'Hara*

PATRICIA O'HARA

State of New Mexico, County of Otero

This instrument was acknowledged before me on

February 21st, 1995 by Michael M. O'Hara

*Dana Bashara*

Notary Public My commission expires 5-9-97

This instrument was acknowledged before me on

February 21st, 1995 by Patricia O'Hara

*Dana Bashara*

Notary Public My commission expires 5-9-97

STATE OF NEW MEXICO, County of Otero, ss, Filed for record in my office this 24th day of February, 1995, at 12:15 O'clock P. M. and duly recorded in Book 797 Page 767 of the Records of said county. *Mary D. Quintanilla* County Clerk *Robert J. Sellen* Deputy

# 1638