

DEERFIELD PARK SOUTH SUBDIVISION NO. 1  
DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS

This Declaration of Covenants, Conditions and Restrictions ("Declaration") is made this 5<sup>th</sup> day of February, 1997, by Polaris Enterprises, a Michigan co-partnership, whose address is 2207 Orchard Lake Road, Suite A, Sylvan Lake, Michigan 48320 (hereinafter sometimes referred to as "Developer").

RECITALS:

A. Developer is the owner of certain real property located in the Township of Macomb, County of Macomb, State of Michigan, which is described on Exhibit A attached hereto and made a part hereof ("Property").

B. Developer desires to develop the Property as a residential subdivision to be known as Deerfield Park South Subdivision No. 1.

C. Developer desires to promote the proper use and appropriate development and improvement of the Property; protect the owners of the Property against improper use of surrounding lots as may depreciate the value of all or any part of the Property; guard against the construction of residential dwellings and other structures with improper or unsuitable materials; promote adequate and reasonable development of the Property; encourage the construction of attractive improvements thereon and establish appropriate locations thereof to secure and maintain proper setbacks from the streets and adequate free spaces between structures; promote high standards of maintenance and operation of the common areas and other community facilities, open areas and services for the benefit and convenience of all owners of the Property and all residents; provide for the establishment of a homeowners' association; provide for said homeowners' association or the owners of lots in the Subdivision to bear certain expenses and to meet certain obligations; and, in general, provide for a residential subdivision of the highest quality and character.

NOW, THEREFORE, Developer hereby declares that the Property, and any parcels and/or lots into which said Property may be divided, is and shall be held, transferred, sold, conveyed and occupied subject to the conditions, covenants, restrictions, reservations and grants hereinafter set forth, together with such other conditions, covenants, restrictions, reservations and grants which are hereafter recorded with respect to said Property; all of which conditions, covenants, restrictions, reservations and grants are for the benefit of and shall run with and bind the Property and all parties having any right, title or interest in the Property or any part thereof, or improvements thereon, as well as their heirs, successors and assigns.

ARTICLE I  
DEFINITIONS

Section 1.1 "Assessment Period" shall mean a twelve (12) month period of operation of the Association for which an assessment is collected.

Section 1.2 "Association" shall mean the Michigan non-profit corporation formed as provided in Article II to serve as the homeowners association for the Subdivision, and its successors and assigns.

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Section 1.3 "Builder" shall mean any person or entity who acquires a Lot for the purpose of engaging in and who does engage in the business of constructing residential dwellings for the purpose of resale and not for such person's or entity's own use.

Section 1.4 "Common Areas" shall mean those areas of land within the Subdivision (and all improvements made therein) now or hereafter owned by the Association for the common benefit, use and enjoyment of the Owners, including without limitation of the foregoing, Deerfield Wetlands Nature Reserve

Section 1.5 "Developer" shall mean Polaris Enterprises, a Michigan co-partnership, its successors and assigns.

Section 1.6 "Entranceway Features" shall mean any entranceway monuments, walls, signage, landscaping, sprinkler system and lighting system installed at the entranceway to the Subdivision within the right of way of Deerfield Park South Drive and/or within the Greenbelt.

Section 1.7 "Greenbelt" shall mean that greenbelt area (including, without limitation, sprinkler system, landscaping, entranceway monuments, entranceway walls, entranceway signage, lighting system and sidewalks, if any), that is constructed within that portion of the right of way of 22 Mile Road that is depicted on the Plat and/or within those areas depicted on the Plat as "26' Private Easement for Public Utilities."

Section 1.8 "Lot" shall mean each unit of land designated for residential use, as identified by a numbered Lot on the Plat, and the residential dwelling, appurtenances, and other Structures constructed thereon.

Section 1.9 "Member" shall mean a member of the Association.

Section 1.10 "Owner" shall mean the holder or holders of the record fee simple title to, and/or the land contract purchaser of, a Lot, whether one or more persons or entities. The term "Owner" shall not include any mortgagee or any other person or entity having an interest in a Lot merely as security for the performance of an obligation, unless and until such mortgagee or other person or entity shall have acquired fee simple title to such Lot by foreclosure or other proceeding or conveyance in lieu of foreclosure. If more than one person or entity owns fee simple title to, or a land contract purchaser's interest in a Lot, then the interests of all such persons or entities, collectively, shall be that of one Owner.

Section 1.11 "Plat" shall mean the plat of the Subdivision as recorded in the real estate records of Macomb County with respect to the Property.

Section 1.12 "Property" shall mean that real property described on Exhibit A attached hereto and previously made a part hereof, as the same may be amended.

Section 1.13 Intentionally Omitted.

Section 1.14 "Road" shall mean the drives, streets, roads, and cul-de-sacs located within the Subdivision as designated on the Plat.

Section 1.15 "Sidewalks" shall mean those sidewalks, if any, installed within that portion of the right of way of 22 Mile Road that is depicted on the Plat.

Section 1.16 "Structure" shall mean any residential dwelling, building, garage, driveway, parking area, gazebo, shed, fence, wall, wood deck, animal pen or run, swimming pool, swing set or other playground apparatus, or any other improvement or structure of a permanent or substantial nature.

Section 1.17 "Subdivision" shall mean the single family residential subdivision created pursuant to the Plat thereof and to be known as Deerfield Park South Subdivision No. 1.

Section 1.18 "Subsequent Phase" shall mean such portions of the real property described on Exhibit B attached as are included within one or more subdivision plat(s) recorded by the Developer.

Section 1.19 "Township" shall mean the Township of Macomb, Michigan or its successor.

ARTICLE II  
DEERFIELD HOMEOWNERS ASSOCIATION

Section 2.01 Establishment of Association. The Developer intends to incorporate a non-profit corporation in accordance with Michigan law to serve as the homeowners association for the Subdivision. The Association and its Members shall have those powers, rights and obligations set forth in this Declaration and in the Articles of Incorporation and By-Laws of the Association.

Section 2.02 Membership. Developer and every Owner shall be a Member of the Association. Every Owner shall become a Member commencing on the date on which fee simple title to said Owner's Lot is conveyed to said Owner or, if applicable, the date on which said Owner enters into a land contract to purchase said Lot. All membership rights and obligations of each Owner shall be appurtenant to and may not be separated from the ownership of said Owner's Lot.

Section 2.03 Voting Rights. The Association shall have two (2) classes of Members in the Association, which are as follows:

(a) Class A Members shall consist of all Owners of Lots other than Developer. Class A Members shall have no voting rights until the time specified in Section 2.03(b) below. Thereafter, as to each matter submitted to a vote of Members, each Class A Member shall be entitled to one vote for each Lot owned by the Class A Member. Where title to a Lot is held by more than one person or entity, all such persons or entities shall be Members but jointly shall be entitled to only one vote per Lot owned by them. Where a Lot is sold pursuant to a land contract, the purchaser under said land contract shall be entitled to the vote for said Lot. Multiple Owners (including co-purchasers under a land contract) may exercise their one vote per Lot as they may mutually agree, and such co-Owners or co-purchasers shall notify the Association in writing of the person entitled to exercise such vote. In the event any multiple Owners fail to provide such notice to the Association within thirty (30) days prior to the date set for a meeting, the Owner whose name first appears on record title shall be deemed to be the Owner authorized to vote on behalf of all the multiple Owners and any vote cast in person or by proxy by said Owner, or the failure of said Owner to vote, shall be binding upon all such multiple Owners.

(b) Developer shall be a Class B Member. Until the date that 95% of the Lots have Owners who are persons or entities other than Developer or a Builder, or on such earlier date as is designated in writing by Developer, Class B shall have the sole voting rights in the Association. On the date that 95% of the Lots have Owners who are persons or entities other than Developer or a Builder, or on such earlier date as the Developer has designated in writing, the Class A Members shall have the voting rights specified in Section 2.03(a) above. Thereafter, in order to continue the orderly development and maintenance of the Property and the Common Areas, the Developer shall have three (3) votes for each Lot as to which Developer is the Owner; Class B Membership shall terminate as to each such Lot owned by Developer upon the conveyance of such Lot to an Owner other than Developer or a Builder, and such Owner shall thereafter be a Class A Member.

Section 2.04 Articles and By-Laws. The Association shall be organized, governed and operated in accordance with its Articles of Incorporation and By-Laws, which the Developer reserves the right to prepare, amend, or replace until such time as the Class A Members are entitled to vote as provided in Section 2.03 above. If any conflict exists between the provisions of the Association's Articles of Incorporation and By-Laws and the provisions of this Declaration, the provisions of this Declaration shall control. Each purchase and sale of a Lot in the

Subdivision shall be subject to the Association's Articles of Incorporation and By-Laws, and, by acquiring a Lot, each Owner agrees to abide by such By-laws and Articles of Incorporation as are then or thereafter created or modified in accordance with this Declaration.

Section 2.05 Board of Directors. The right to manage the affairs of the Association shall be exclusively vested in the Association's Board of Directors. The Board of Directors shall consist of five (5) members. Initially, the Directors shall be elected by the Developer (as the sole Class B Member) and may be employees, officers, agents or equity owners of the Developer and need not be Owners or Builders. At the annual meeting immediately following the date that the Class A Members obtain voting rights as provided in Section 2.03 above, and thereafter, the Directors shall be elected by the Members in accordance with the provisions of the Articles of Incorporation and By-Laws of the Association.

### ARTICLE III RIGHTS IN COMMON AREAS

Section 3.01 Owner's Easement of Enjoyment; Easements Pertaining to Entranceway Features, and Greenbelt. Subject to all applicable law and municipal ordinances and further subject to the terms and conditions of this Declaration, each Owner shall have a right and easement to use and enjoy the Common Areas for their intended purposes, which easement shall be appurtenant to and shall pass with title to said Owner's Lot. The Plat creates, for the benefit of the Developer, its successors and assigns, easements over and across Lots 1, 3, 4, 5, and 97 for the construction, installation, maintenance, operation repair, replacement and improvement of the Greenbelt in the area depicted on the Plat. The foregoing easements shall be assigned to the Association concurrent with the conveyance to the Association of the Common Areas in accordance with Section 3.04 below. Owners of the Lots subject to the foregoing easements shall not, without Developer's prior approval, remove, damage or alter in any manner whatsoever the Entranceway Features or Greenbelt located within such Owner's Lot.

Section 3.02 Common Areas. The Association shall be responsible for the maintenance, repair, operation, improvement and replacement of the Common Areas, the Sidewalks, the Greenbelt, and the Entranceway Features, subject to all statutes, ordinances, rules and regulations affecting the Common Areas, the Sidewalks, the Greenbelt, and the Entranceway Features and any maintenance agreements pertaining to the Common Areas, the Sidewalks, the Greenbelt, and the Entranceway Features, entered into between Developer (or the Association) and any governmental agency having jurisdiction over the Common Areas, the Sidewalks, the Greenbelt, and the Entranceway Features. The Association shall have the right, subject to the limitations contained in this Declaration, to establish rules and regulations as the Board of Directors may deem necessary or desirable for the maintenance, repair, improvement and replacement of the Greenbelt and the Entranceway Features in order to insure an aesthetically pleasing appearance thereof for the benefit of all Owners within the Subdivision.

Section 3.03 Title to Common Areas, the Sidewalks, the Greenbelt, and the Entranceway Features. On the date that voting rights have been obtained by the Class A Members as provided in Section 2.03 above, or earlier in the Developer's sole discretion, the Developer shall convey to the Association, by quit claim deed and/or bill of sale (without warranty), as applicable, title to the Common Areas, the Sidewalks, the Greenbelt, and the Entranceway Features, and shall also assign to the Association all related easement rights under Section 3.01. The foregoing conveyances and assignments shall be subject to any easements reserved or granted by Developer (in accordance with this Declaration) and any maintenance and/or easement agreements entered into or to be entered into with the Township or any other governmental entity.

Section 3.04 Common Area Easements and Rights of Developer and Association. Developer hereby reserves for itself, the Association and the Township and their respective agents, representatives, successors and assigns, a perpetual easement, for reasonable access at reasonable times, to the Common Areas, the Sidewalks, the Greenbelt, the Nicol Drain, and the Entranceway Features, for purposes of maintenance, repair, replacement, preservation, operation and improvement thereof in accordance with this Declaration.



Prior to the conveyances and assignments by Developer to the Association as provided in Section 3.03 above, the Developer shall have the exclusive right, subject to and in compliance with all applicable law, including without limitation of the foregoing, the Subdivision Act, to grant public or private easements within those portions of the Common Areas owned by Developer or within the easements reserved on the Plat and/or in this Declaration for the construction, installation, repair, maintenance, operation, improvement, and replacement, as appropriate, of rights-of-way, walkways, bicycle paths, telephone facilities, cable television facilities, natural gas facilities, electrical facilities, drainage facilities, sanitary sewer facilities, storm sewer facilities, water supply facilities, and other public and private utility facilities and telecommunication facilities, including all equipment, facilities, and appurtenances relating thereto. The location and configuration of such easements shall be determined by Developer in its sole discretion.

Following the conveyances and assignments pursuant to Section 3.03 above, the Association shall have the right to reserve and/or grant public or private easements for such purposes, subject to such conditions as may be agreed upon by the Members; provided, however, that the location of any easement and the terms and conditions of any agreement pertaining to such easement shall be effective only upon execution of an instrument signed by two-thirds (2/3) of all Class A Members entitled to vote and by Developer if Developer remains a Class B Member and approved by the Township.

#### ARTICLE IV COVENANTS FOR ASSESSMENTS AND OTHER CHARGES

Section 4.01 Creation of the Lien and Personal Obligation for Assessments. Each Owner of a Lot, other than Developer, by accepting title to such Lot, or, by entering into a land contract for the purchase of such Lot, shall be deemed to covenant and agree to pay to the Association, when due, the assessments described below, regardless of whether or not such covenant shall be expressed in such Owner's instrument of conveyance or land contract:

- (a) annual assessments to meet regular Association expenses, which shall include assessments necessary for the Association to perform its obligations under Article III above and as may be necessary to maintain any easement referenced in Section 3.01 of this Declaration; and
- (b) special assessments for capital improvements, to be established and collected as set forth below; and
- (c) special assessments for the maintenance of Owners' Lots and as described in Section 4.05(b) below, which special assessments shall be established and collected as set forth below; and
- (d) deficit assessments, to be established and collected as set forth below; and
- (e) all other assessments for taxes, levies, assessments or other charges lawfully imposed or charged to the Association with respect to the Nicol Drain, the Common Areas, the Sidewalks, the Greenbelt or the Entranceway Features.
- (f) the assessments against Lots described in Article V below.

The foregoing assessments (hereinafter sometimes collectively referred to as "Assessments"), together with such interest thereon and costs of collection thereof (including court costs and reasonable attorneys' fees) which are described below, shall be a lien on the Lot against which they are made and all improvements

thereon from and after the date the Association declares the applicable assessment to be due and payable ("Assessment Date"). Each such assessment, together with interest thereon, and the costs of collection thereof, in addition to constituting a lien on such Lot and improvements, shall also constitute a joint and several personal obligation of the person or persons who was/were the Owner(s) of the Lot on the Assessment Date.

Section 4.02 Purpose of Annual Assessments. The annual assessments levied under this Article IV shall be used by the Association for the purpose of: (i) promoting the recreation, health, safety, welfare, common benefit and enjoyment of the residents of the Subdivision; (ii) operating, preserving, maintaining, repairing, replacing and improving the Common Areas, the Sidewalks, the Greenbelt, and the Entranceway Features; (iii) providing services and facilities for the benefit of residents of the Subdivision; and (iv) procuring insurance with respect to the Common Areas, the Nicol Drain, the Sidewalks, the Greenbelt, and the Entranceway Features, and for the protection of the Association and its Directors and paying the applicable insurance premiums and the taxes, special assessments and mortgage installments relating to the Nicol Drain, the Common Areas, the Sidewalks, the Greenbelt, and the Entranceway Features; and (v) establishing and maintaining appropriate reserves for the foregoing purposes.

Section 4.03 Annual Assessments. Commencing in the year the Association is formed, and for each fiscal year of the Association thereafter, annual assessments shall be levied and paid in the following manner:

(a) The Board of Directors of the Association shall levy against each Lot an assessment, based upon the projected costs, expenses and obligations of the Association for the ensuing fiscal year, which assessment shall be a specified amount per Lot. In the event the actual costs, expenses and obligations of the Association exceed the amount projected, the Board of Directors of the Association shall have the right to levy against each Lot such additional annual assessments (sometimes herein referred to as "deficit assessments") as may be necessary to defray such costs, expenses and obligations.

(b) For the first year in which the Association is formed, the annual assessment shall be \$200.00 per Lot. The Board of Directors may, in its sole discretion, raise the annual assessment to Three Hundred and 00/100 (\$300.00) Dollars per Lot after said first year. Within thirty (30) days following the beginning of each fiscal year of the Association, the Board of Directors shall send a written notice of assessment to each Owner stating the amount of the assessment established by the Board of Directors for the ensuing year. Except for the above-described increase to \$300.00, no annual assessment may be increased by an amount in excess of ten (10%) percent of the annual assessment for the preceding year without the affirmative vote of sixty (60%) percent of the total combined Class A and Class B votes, cast in person or by proxy, at a meeting of the Members called for such purpose. The quorum requirements for such meeting shall be the same as those specified in Section 4.04 below. Each Owner shall pay said annual assessment (and any deficit assessment) within thirty (30) days from the date the written statement therefor is mailed. Assessments not paid within said thirty (30) day period shall be deemed delinquent and interest shall accrue on delinquent assessments at the interest rate established by resolution of the Association's Board of Directors, which interest rate shall not exceed the highest rate allowed by law.

(c) Any Owner who acquires a Lot from Developer or from a person or entity exempt from the payment of assessments under Section 4.07 below, shall pay to the Association, on the date said Lot is conveyed to said Owner, an amount equal to the prorated balance of any annual assessment, special assessment and deficit assessment, if any, established for the then current Assessment Period, based upon the number of days remaining in the then current Assessment Period from the date of conveyance. Such Owner shall also pay to the Association, on that date, a one-time assessment of \$100.00 to be used for working capital. For each fiscal year thereafter, such Owner shall be liable for any and all assessments levied in accordance with this Article IV.

(d) The fiscal year of the Association shall be established in the manner set forth in the By-Laws.

(e) The Board of Directors, in its discretion, may establish an installment program for the payment of any annual, special or deficit assessment and may charge interest in connection therewith.

Section 4.04 Special Assessments for Capital Improvements. In addition to the annual assessments authorized by Section 4.03 above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, repair, or replacement of any improvements to the Common Areas, the Sidewalks, the Greenbelt or the Entranceway Features, including any fixtures, equipment and other personal property relating thereto, provided, however, that no such special assessment shall be levied unless first approved by sixty (60%) percent of the total combined Class A and Class B votes, cast in person or by proxy, at a meeting of the Members duly called for such purpose. Written notice of such meeting shall be sent to all Members at least thirty (30) days in advance of the meeting, which notice shall set forth the purpose of the meeting. Any such special assessments shall be due and payable according to the terms and conditions and in the manner specified in the resolution of the Association. Any special assessment not paid when due shall be deemed delinquent and interest shall accrue on such delinquent assessment at the interest rate established by resolution of the Board of Directors, which interest rate shall not exceed the highest rate allowed by law.

The quorum required for the first meeting called for the purpose of voting on a special assessment shall be at least eighty (80%) percent of all the then authorized votes of the Members, present either in person or by proxy. If the required quorum is not present at the first meeting called for the purpose of considering the special assessment, another meeting may be called for said purpose, with notice thereof to be given as provided for in this Section 4.04 and the required quorum at any such subsequent meeting shall be reduced to sixty (60%) percent of all the then authorized votes of the Members, present either in person or by proxy, provided that such second meeting is held within sixty (60) days from the date of the first meeting.

Section 4.05 Uniform Assessment Rate: Assessments Against Specific Lots.

(a) Subject to Section 4.05(b) below, all annual, special and deficit assessments shall be established at the same rate for all Lots within the Subdivision.

(b) In addition to the assessments otherwise authorized in this Article IV, the Association may levy a special assessment against one or more specific Lots, for the purpose of maintaining and caring for or replacing the surface thereof and any plantings, landscaping, trees, or other vegetation located thereon, or as described in Article V below. A special assessment for such purposes shall not be levied except in compliance with the following procedures:

(i) The Association shall determine that one or more trees on the applicable Lot is dying and cannot be saved or is already dead or that the appearance or condition of the applicable Lot, or a portion thereof or any area with respect to which the Owner has obligations under Article V below (including, without limitation, Section 5.13), significantly detracts from the appearance and attractiveness of the Subdivision or otherwise constitutes a violation of the restrictions set forth in Article V below. Such determination shall be made by the Board of Directors.

(ii) Written notice of such determination, specifying the nature of the unsatisfactory condition and the actions required to remedy the unsatisfactory condition, shall be delivered to the applicable Owner.

(iii) Except as elsewhere herein specified, the Owner shall have a period of not less than thirty (30) days from the date said Owner receives the above-referenced notice to commence the required work.

(iv) If the Owner has not commenced the required work within said thirty (30) day period or, if having commenced such work, the Owner fails to complete it within a reasonable time after commencement, the Association shall have the right to enter upon the Owner's property, complete the required work and assess the cost thereof against such Lot; provided, however, such cost shall not exceed the reasonable cost for performing such work.

(v) Any assessment levied under this Section 4.05(b) shall be due and payable thirty (30) days from the date of mailing to the Owner the statement therefor. Any such assessment not paid when due shall be deemed delinquent and interest shall accrue on such delinquent assessment at the rate of ten (10%) percent per annum or at the highest rate allowed by law, whichever is less.

Section 4.06 Certificate With Respect to Assessments. Upon the written request of any Owner, the Association shall furnish, within a reasonable time, a written certificate regarding the status of any assessments levied against such Owner's Lot(s). Any such certificate, when properly issued by the Association, shall be conclusive and binding with regard to the status of the assessments as between the Association and any bona fide purchaser of said Lot(s) described in the certificate and any lender who has taken a lien on said Lot(s) as security for the repayment of a loan.

Section 4.07 Exemptions from Assessments.

(a) All Lots owned by Developer shall be exempt from all annual, special and deficit assessments. Upon conveyance of any Lot by Developer to a Class A Member, the exemption for such Lot shall thereupon cease and such Lot shall then be liable for the prorated balance of the annual, special and deficit assessments for the then current Assessment Period. Notwithstanding the foregoing, however, any Lots owned by Developer shall not be exempt from assessments by the Township for real property taxes and other charges.

(b) Builders and those real estate companies that own or hold any Lot(s) for resale to customers in the ordinary course of business shall not be liable for the payment of any annual, special or deficit assessments imposed by the terms of this Article IV; provided, however, that the exemption established by this Section 4.07(b) shall cease and terminate as to any Lot contained in the Subdivision in the event construction of a residential dwelling thereon is not commenced within two (2) years from the date the Lot is acquired by such Builder or real estate company.

Section 4.08 Subordination of Liens to Mortgages. The lien for assessments provided for in this Article IV shall be subordinate to the lien of any first mortgage or mortgages held by any bank, savings and loan association, insurance company, mortgage company or other similar institution which lien exists of record at the time the lien for assessments shall be imposed. Sale or transfer of a Lot, or any portion thereof, shall not affect the assessment lien. However, the sale or transfer of any Lot in connection with mortgage foreclosure proceedings, or any proceeding in lieu thereof, shall extinguish the lien of the assessments, interest and charges, which became due prior to such sale or transfer, but in no such event shall the prior Owner of said Lot be relieved of any liability for such obligations and debts. No sale or transfer pursuant to any foreclosure proceeding, or any proceeding in lieu thereof, shall relieve any Lot from any assessments thereafter levied or from the lien accruing from such assessments, and no subsequent sale or transfer shall release such Lot from liability for any assessments, interest or charges which thereafter become due or from any lien therefor.

Section 4.09 Collection of Assessment and Creation of Lien. If any assessment is not paid within thirty (30) days from the date payment is due, the Association may sue the Owner and obtain a personal judgment against said Owner and/or may enforce the lien in the same manner as, and by following similar procedures which are required for, the foreclosure of mortgages, whether by advertisement or judicial action, including the allowance of such costs and reasonable attorneys' fees as would be taxable in the foreclosure of a mortgage.

ARTICLE V  
GENERAL RESTRICTIONS

Section 5.01 Land and Building Use Restrictions. All Lots shall be used for private single-family residential purposes only. No Structure shall be erected, placed, altered, or permitted to remain on a Lot except one (1) single family private residential dwelling or model home not exceeding the greater of two (2) stories or twenty-five (25) feet in height with an attached private garage containing not more than two (2) parking spaces.