

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
FOXHILL TOWNHOMES

THIS DECLARATION, made on the date hereinafter set forth by DMI CORPORATION, a Virginia corporation, hereinafter referred to as "Declarant".

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain property in the City of Harrisonburg, Commonwealth of Virginia, which is more particularly described in Appendix "A" attached, to be known as the Foxhill Townhomes.

NOW, THEREFORE, Declarant hereby declares that all of the properties described shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and which shall be binding on all parties having any right, title or interest in the described properties, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

Definitions

SECTION 1: "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

SECTION 2: "Properties" shall mean and refer to that certain real property hereinabove described.

SECTION 3: "Lot" shall mean and refer to any numbered or lettered plot of land shown upon any recorded subdivision map of the Properties.

SECTION 4: "Common Area" shall mean the parking areas, driveways, sidewalks, lawns, shrubbery and other landscaping and improvements in these areas, which are marked as such on the plat.

SECTION 5: "Declarant" shall mean and refer to DMI Corporation, a Virginia corporation, its successors and assigns.

SECTION 6: "Association" shall mean and refer to a corporation organized by the "Owner" for the purpose of managing and maintaining the common areas and exterior of the buildings.

## ARTICLE II

### Covenants of Declarant

The Declarant will form an Association to insure that the responsibilities of the Declarant for Architectural Control and Maintenance shall be fulfilled for this complex in perpetuity.

## ARTICLE III

### Architectural Control and Maintenance

SECTION 1: Improvements - No landscaping, building, fence, well, or other structure shall be commenced, erected or maintained upon any lot, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and locations of the same shall have been submitted to and approved in writing by the Declarant as to harmony of external design and location in relation to surrounding structures, landscaping, and topography.

Any changes, deletions or additions to the improvements or the lots shall be subject to the approval of the Declarant or the Association.

SECTION 2: Maintenance and Repair - The Declarant shall repair and maintain the exterior of the improvements and maintain landscaping on lots. The repair and maintenance of improvements shall be limited to the painting and staining of all exterior surfaces and to such other minor, routine maintenance of exterior surfaces as in the judgment of the Declarant is deemed necessary in order that the residences present a well-kept appearance. The repair and maintenance shall not include: 1) repair or replacement of glass; 2) structural defects; and 3) substantial capital replacement, such as roof and siding replacement, except as provided in the article covering "Insurance" hereof. The maintenance of landscaping on lots shall include such pruning, mowing, cultivating, feeding, fertilizing, mulching and replacement of lawns and plants, and such removal of leaves, plants and clippings, and maintenance of fences, hedges, walks, driveways and parking areas as in the judgment of the Association deemed necessary in order that the landscaping presents a well-kept appearance. The costs of the aforesaid maintenance and repair shall be assessed by the Association as a common expense, to be borne equally by all Owners of lots located within the parcel to which this Declaration is applicable.

The Association does not assume responsibility for watering lawns, trees, shrubbery or other landscaping on lots (said watering being the responsibility of each Owner as to his lot), but the Association reserves the right to do such watering if deemed by the Association to be necessary or desirable to and to use the water service of such lot for that purpose.

In the event, however, that the need for maintenance, repair or

replacement is caused through the willful act or failure to act of the Owner, his family, guests, invitees or lessees, the entire cost of such maintenance, replacement or repairs shall be added to and become a part of the assessment to which such lot is subject.

SECTION 3: Drainage - No obstruction, diversion, bridging or confining of existing channels upon, under and/or across any portion of said property through which water, in time of storms, or otherwise naturally flows, or through which water has been caused to flow artificially by Declarant in the development of the said property, shall be made by any person in such a manner as to cause damage to any property. The Declarant may determine that a new channel or a diverted, bridged or reconstructed existing channel is adequate to carry the amount of storm and other water liable to flow therein, and may approve the same; provided, however, that the right is hereby expressly reserved to Declarant, as an inducement to the development of the entire property, to change existing channels for the natural flow of water and also create channels and means of artificial drainage and water flow and, further, to cause reasonable increases or decreases in the amount of water which would in a state of nature flow into and through any such natural or artificial water channels or means of drainage.

SECTION 4: Entry for Maintenance - The Association or its agents shall have an easement of entry on any lot when necessary to perform any maintenance, landscaping or construction for which the Association is responsible. Such entry shall be made with as little inconvenience to the Owners as practicable, and any damage caused thereby shall be repaired by the Association out of the common expense fund.

## ARTICLE IV

Party Walls

SECTION 1: Definition of Party Walls - The side wall of each dwelling constructed along the side line of any Lot abutting the side line of another Lot shall be a party wall, and the owners of each such abutting Lot shall have an easement to use such wall as a support for the dwelling constructed or to be constructed on his respective Lot. Declarant, and any assignee to whom such easement of support is expressly assigned, reserve the right, whether or not such easement is expressly reserved in any deed of conveyance of any Lot, to grant such easement of support to the purchaser of any Lot. The cost of maintaining any such party wall shall be borne equally between the abutting Lot owners using such party wall for support and so long as such wall is so used.

SECTION 2: General Rules of Law to Apply - Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence, or willful acts, or omissions shall apply thereto.

SECTION 3: Sharing of Repair and Maintenance - The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

SECTION 4: Destruction by Fire or Other Casualty - If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion

to such use without prejudice, however, to the right of any such Owners to call for a large contribution from the others under any rule of law regarding the liability for negligent or willful acts or omissions.

SECTION 5: Weatherproofing - Notwithstanding any other provision of this Article, an Owner who, by his negligent or willful act causes the party wall to be exposed to the elements, shall bear the whole cost of furnishing the necessary protection against such elements.

SECTION 6: Right to Contribution Runs With Land - The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successor in title.

SECTION 7: Arbitration - Any dispute arising out of or relating to this Article, or the breach thereof, shall be settled by arbitration in accordance with the Rules of the American Arbitration Association, and judgment upon the award may be entered in any Court having jurisdiction thereof.

#### ARTICLE V

##### Use Restrictions

SECTION 1: Single Family Residences - Each Lot shall be used exclusively for residential purposes and no building shall be erected, altered, placed or permitted to remain thereon other than one single family dwelling approved pursuant to Article III of this Declaration (hereinafter referred to collectively as "dwellings" or severally as "dwelling").

SECTION 2: Reservation for Utility Installation - Declarant reserves for the benefit of itself, its successors and assigns, and the City of Harrisonburg, the right to use the streets and parking areas shown on the aforementioned plat for ingress and egress in connection with the

installation, repair, maintenance and/or replacement of utility lines of every kind and description within said streets, and for any other lawful purposes. The Declarant dedicates to the City of Harrisonburg by the recordation of the plat, easements for the installation, repair, maintenance and/or replacement of utility and drainage facilities within the areas reserved for and designated "Utility Easement" on the aforementioned plat. No private water or sewage disposal system shall be maintained on any lot.

SECTION 3: Front, Side and Rear Yards - No structure of any kind, including fences, shall be erected in any front or side yard. Accessories such as buildings, decks, fences, walls and other structures may be constructed in the rear yard, but are subject to the written approval of the Declarant or the Association.

SECTION 4: Noxious or Offensive Activity - No obnoxious or offensive activity shall be conducted or permitted on any of the Properties, and nothing shall be done thereon which may be or become an annoyance or a nuisance to the neighborhood. No business or profession of any kind or nature shall be carried on or practiced in any dwelling without the express written consent of Declarant.

SECTION 5: Trailers, Campers, Boats - No structure, trailer, tent, shack, barn, garage, or other outbuilding shall be used on any of the Properties at any time as a residence, either temporarily or permanently. Nor shall any boat, boat trailer, school bus, or any truck over 3/4 ton, camper or camping trailer, or other mobile living or recreational vehicle, be stored, parked or kept on any of the Properties.

SECTION 6: Pets - No pets of any kind or description shall be

allowed to be maintained on or in any of the properties, with the exception of fish, so long as they are exclusively maintained indoors.

SECTION 7: Signs - No sign of any kind shall be displayed to the public view on any of the Properties, except contractors' signs during construction period and one professional real estate sign of not more than six square feet, advertising a lot, and any dwelling constructed thereon, for sale or for rent. No person shall post any advertisements, or posters of any kind in or on the properties. Parking signs, parking direction signs, traffic direction signs, and no solicitation signs are excluded from this prohibition.

SECTION 8: Trash Receptacles - The Properties shall not be used or maintained as a dumping ground for rubbish or scrap. Trash, garbage or other waste shall not be kept on any of the Properties except in covered sanitary containers. Trash, leaves, or other similar material shall not be burned.

SECTION 9: Exterior Wiring/Antennae/Clothes Lines - No owner, resident or lessee shall install wiring for electrical or telephone installation, machines or air conditioning units, etc., on the exterior of any building or structure or in a way that causes same to protrude through the walls or the roof of any building or structure. Exterior television or other antennae, or dishes, are prohibited. Clothes lines or other clothes drying apparatus shall be screened from public view.

SECTION 10: Vehicles - Inoperative or unlicensed cars, trucks or other vehicles shall not be parked or stored on streets or parking areas. Motorized vehicles using private streets and parking areas must be properly licensed and inspected by the State and drivers must have a valid operators license.



SECTION 11: Restriction on Use as Hotel - The respective Lots shall not be rented by the Owners thereof for transient or hotel purposes, which shall be defined as (a) rental for any period less than thirty (30) days; or (b) any rental if the occupants are provided customary hotel services, such as room service for food and beverage, furnishing laundry and linen, and bellboy service. Other than the foregoing obligations, the Owners of the respective Lots shall have the absolute right to lease same provided that said lease is made subject to the covenants and restrictions contained in this Declaration.

SECTION 12: Parking Lots - All parking lots within the Common Area are reserved for the use of the Owners, their guests and invitees only. Spaces shall be unassigned and available on a first come first serve basis.

#### ARTICLE VI

##### Easements

SECTION 1: Easement for Encroachments - If any improvements on any Lot now encroaches upon any other Lot as a result of the construction or repair of the improvements, or if any such encroachment shall occur hereafter as a result of settlement or shifting of any improvements, or otherwise, a valid easement for the encroachment and for the maintenance of the same, so long as the improvement stands, shall exist. In the event any improvements shall be partially or totally destroyed as a result of fire or other casualty, or as a result of condemnation or eminent domain proceedings, and then reconstructed, thus causing encroachments of any improvement of any Lot upon any other Lot, a valid easement for such encroachments and the maintenance thereof shall exist so long as the improvement shall stand.

SECTION 2: Overhanging Roofs and Eaves - The owner of each lot is

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hereby declared to have an easement and the same is hereby granted by the Declarant, over each adjoining lot and Common Areas, for overhanging roofs and eaves and the maintenance thereof.

SECTION 3: Easements of the Association - There is hereby reserved to the Association such easements as are necessary to perform the duties and obligations of the Association.

SECTION 4: Pipes, Ducts, Cables, Wires, Conduits - Each Owner shall have an easement in common with the Owners of all other lots to use pipes, wires, ducts, cables, conduits, telephone and public utility lines. The Association, its agents, and such telephone, electric and other utility companies as may be appropriate (but no other person or entity without the consent of the Owner) shall have the right of access to each lot to inspect the same, to remove violations therefrom, and to maintain, repair or replace the common elements contained therein or elsewhere in the living units.

SECTION 5: Easements Over Sidewalks - Each Owner is hereby declared to have an easement and the same is hereby granted by the Developer over all paved sidewalks located on all lots for the sole purpose of pedestrian ingress to and egress from the lots.

SECTION 6: Priority of Easements - Each of the easements hereinabove referred to shall be deemed to be established upon the recordation of this Declaration and shall run with the land for the use and benefit of the lots and the Common Area, superior to all other encumbrances which may hereafter be applied against or in favor of the properties or any portion hereof.

#### ARTICLE VII

##### Insurance

The risk of loss or damage to the property by fire, windstorm,

casualty, or other cause is the responsibility of each owner. Every owner shall also maintain his own liability insurance. Hazard Insurance must have a Class VI or better rating as reflected in the most recent edition of Best's Rating Guide. Each owner shall name the Homeowner's Association individually as an additional interested party in their policy for the benefit of the other lot owners without naming them. A proper mortgage endorsement clause will be attached to the policy with a loss payable clause in favor of the mortgages on each lot and the Homeowner's Association as their interest may appear. Each owner shall provide proof of such insurance upon purchase of a lot, and provide proof of renewal no less than annually.

#### ARTICLE VIII

##### Common Areas

The Common Areas applicable to this development shall be those designated on the plat. All costs of maintaining and operating the Common Area, including without limitation the cost of replacements, improvements, insurance and real estate taxes shall be assessed as a common expense, to be borne by the Association.

Nothing shall be done or kept in any lot or Common Area which will increase the rate of insurance on any lot or Common Area, without the prior written consent of the Association. No owner shall permit anything to be done or kept in his lot or in the Common Area which will result in the cancellation of insurance on any lot or any part of the Common Area, or which would be in violation of any law. No waste will be committed to the Common Area.

There shall be no obstruction of the Common Area. Nothing shall be stored in the Common Area without the prior written consent of the

Association.

Nothing shall be altered or constructed in or removed from the Common Area, except upon the written consent of the Association.

The Association is authorized to adopt rules for the use of the Common Area and furnish the same in writing to the Owners, and there shall be no violation of such rules as are adopted.

In the event that any taxing authority having jurisdiction over the Properties shall levy or assess any tax or special assessment against the Properties, as a whole, as opposed to levying such tax or special assessment against each Lot now levied and assessed, then such tax or special assessment so levied shall be paid by the Association.

#### ARTICLE IX

##### Reconstruction or Repair After Casualty

##### and Eminent Domain

SECTION 1: Reconstruct and Repair - If any part of the properties shall be damaged by casualty, it shall be reconstructed or repaired. Such reconstruction or repair shall be commenced within a reasonable time, and in no event later than ninety (90) days after the occurrence of the casualty, and such repairs or reconstruction shall be prosecuted thereafter with due diligence until completion.

SECTION 2: Plans and Specifications - Any reconstruction or repair must be substantially in accordance with the Plans; or according to plans and Specifications approved by the Homeowner's Association and their mortgagees, which approvals shall not be unreasonably withheld.

ARTICLE X

COMPLIANCE AND DEFAULT

SECTION 1: Compliance with Bylaws, Regulations and Covenants; Damages; Injunctions - Each lot owner and his family and his or their guests, employees, agents and lessees and their guests, employees and agents, shall comply strictly with the Bylaws and the administrative rules and regulations adopted pursuant thereto. Acquisition, rental or occupancy of a lot shall constitute an acknowledgement that the lot owner, tenant or occupant agrees to be bound by the provisions of this Declaration. Failure to comply with any of the same shall be grounds for an action to recover sums due or for damages or for injunctive or any other relief, or any combination thereof, maintainable by the Association on behalf of the other lot owners or in a property case, by an aggrieved lot owner.

SECTION 2: Negligence - A lot owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his willful or negligent act or omission or by that of any member of his family or his or their guests, employees, agents, or lessess, or their guests, employees and agents.

SECTION 3: Costs and Attorney's Fees - In any proceeding arising because of an alleged failure of a lot owner or the Association to comply with the terms of the Declaration, Articles of Incorporation of the Association, the Bylaws, or the rules and regulations adopted pursuant to them, as they or any of them may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorney's fees as may be awarded by the Court.

SECTION 4: No Waiver of Rights - The failure or delay of the

Association or any lot owner to enforce any covenant and restriction of the Declaration, the Articles of Incorporation of the Association, the Bylaws, or the rules and regulations adopted pursuant to them, shall not institute a waiver of the rights to do so thereafter.

#### ARTICLE XI

##### General Provisions

SECTION 1: Enforcement - Any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

SECTION 2: Severability - Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provision which shall remain in full force and effect.

SECTION 3: Amendment - The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall automatically be extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded.

SECTION 4: Protection of Mortgagees - The rights under this Declaration of a holder of a first lien on a lot shall not be adversely affected by any amendment unless the amendment is approved by such lienholder as provided herein. A copy of any proposed amendment shall be furnished to

all bona fide first lienholders, and unless the disapproval of any such amendment is received within thirty (30) days of the giving of such copy, the amendment shall be conclusively deemed approved by such lienholder.

SECTION 5: Provision For Benefit of Mortgagees - All provisions of this Declaration requiring the Association to maintain Common Elements, to collect assessments, and to make any repairs, and all restrictions in this Declaration are intended for the benefit of, and may be enforced by, either a lot owner or any mortgagee of a lot.

SECTION 6: Consent of First Mortgagees - Notwithstanding, and in addition to, any provisions of this Declaration, the Bylaws, or the Rules and Regulations, if, when and as promulgated, unless seventy-five percent (75%) of the mortgagees (based upon one (1) vote for each mortgage owned) have given their prior written approval, the Association and the Board of Directors shall not be entitled to: (i) change the pro rata interest or obligations of any lot for (a) purposes of levying assessments or proceeds of condemnation awards or for (b) determining the pro rata share of ownership of each lot in the common elements; (ii) partition or subdivide any lot; (iii) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements; provided that the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements shall not be deemed a transfer within the meaning of this clause.

SECTION 7: Priority of First Mortgagees - No provision of this Declaration, the Bylaws, or the Rules and regulations, if, when and as promulgated, shall be construed to grant to any lot owner, or to any other party, any priority over any rights of first mortgages of the lots pursuant

to their first mortgages in the case of a condemnation award for the taking of lots and/or the Common Elements or any portions thereof.

## ARTICLE XII

### Common Expense

**SECTION 1: Assessment** - A special closing assessment in the amount of \$200.00 shall be collected at settlement from each purchaser of a lot from the Declarant and from all subsequent owners of any lot. The special closing assessment shall be in addition to, and not in lieu of, any other assessment established pursuant to this Declaration.

The initial assessment for common expense shall be \$50.00 per month. The Homeowners Association has the right to change the assessment from time to time. Any sum of common expenses required to be paid hereunder, which is not paid when due, is delinquent. If the share of common expense is not paid within thirty (30) days of the due date, the share of common expense shall bear interest at the legal rate from the due date. Failure to pay the assessment for common expense may create a lien on the lot. The Homeowner's Association or any owner or owners, individually or collectively, may bring an action at law against the Owner obligated to pay same. Any action at law so instituted shall include the right to collect the delinquent amount and interest plus costs and reasonable attorney's fees.

**SECTION 2: Rights of First Mortgagees** - Where an institutional mortgagee of a first mortgage of record or other purchaser of a lot obtains title as a result of foreclosure of the first mortgage, such purchaser, his successor and assigns, shall not be liable for (and no lien shall exist on such lot for) the share of the common expenses or assessments of the Association chargeable to such lot which became due prior to the acquisition



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of title to such lot by such purchaser. Nothing herein shall be construed to relieve the prior lot owner-mortgagor of his personal obligation to pay such unpaid share of common expenses or assessments.

**ARTICLE XIII**

**Homeowner's Association**

At any time from the date the last Lot is conveyed by the Declarant, seventy-five percent (75%) of the Lot Owners shall form a Homeowner's Association which may adopt its own By-Laws and schedule of assessment, which shall be binding upon all Lot Owners.

**WITNESS** the following signature and seal:

DMI CORPORATION,  
a Virginia corporation

BY:

*Sterling M. Nichols* (SEAL)  
STERLING M. NICHOLS, President

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COMMONWEALTH OF VIRGINIA

County of James City  
CITY OF WILLIAMSBURG, Go-wit:

The foregoing instrument entitled Declaration of Covenants, Conditions and Restrictions of Foxhill Townhomes, was acknowledged before the undersigned Notary Public, in and for the jurisdiction aforesaid, by Sterling M. Nichols, President of DMI Corporation, a Virginia corporation, this 18th day of April, 1997.

Cynthia G. Humeau  
NOTARY PUBLIC

My commission expires on: June 30, 2000.

Prepared by:  
WILLIAM R. BLAND  
Attorney at Law  
Post Office Box 3491  
Williamsburg, VA 23187  
(757) 229-9662

# 014870661 APPENDIX A

All that certain lot, piece or parcel of land containing 4.294 acres, more or less, situate in the City of Harrisonburg, Virginia, designated as FOXHILL TOWNHOMES, SECTION ONE" as shown on that certain plat consisting of 6 sheets entitled, "FOXHILL TOWNHOMES, SECTION ONE, CITY OF HARRISONBURG, VIRGINIA" made by Benner & Assoc., Inc., dated February 14, 1997, Revised March 11, 1997, which said plat is attached hereto to be recorded herewith for a more complete description.

Being a portion of the property conveyed to DMI Corporation, a Virginia corporation, by Deed dated March 5, 1997 from Weinstein Associates, a Virginia general partnership, and recorded in City of Harrisonburg Deed Book 1485, page 700.

VIRGINIA: In the Clerk's Office of the Circuit Court of Rockingham County  
The foregoing instrument was this day presented in the office aforesaid, and is  
together with the certificate of acknowledgement annexed, admitted to record this  
14 day of April, 1997 at 2:41 P.M. I certify that  
taxes were paid when applicable:

Sec. 58-54 - State \_\_\_\_\_ County \_\_\_\_\_ City \_\_\_\_\_  
Sec. 59-54.1 - State \_\_\_\_\_ County \_\_\_\_\_ City \_\_\_\_\_ Transfer \_\_\_\_\_  
Recording 31.00 TESTE

L. WAYNE HARPER  
CLERK

Deed Book No. 1487 Page 613

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ROCKINGHAM COUNTY

L. WAYNE HARPER, CLERK

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
FOXHILL TOWNHOUSES

THIS DECLARATION, is made on the date hereinafter set forth by DMI CORPORATION,  
a Virginia corporation, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the City of Harrisonburg,  
Commonwealth of Virginia, which is more particularly described in Exhibit A attached, to be known  
as the Foxhill Townhomes.

NOW THEREFORE, Declarant hereby declares that all of the properties described shall be  
held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions,  
which are for the purpose of protecting the value and desirability of, and which shall run with, the real  
property and which shall be binding on all parties having any right, title or interest in the described  
properties, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of  
each owner thereof.

ARTICLE I

Definitions

SECTION 1. "Owner" shall mean and refer to the record owner, whether one or more persons  
or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers,  
but excluding those having such interest merely as security for the performance of an obligation.

SECTION 2. "Properties" shall mean and refer to that certain real property hereinabove described and any property shown on the master plan of Foxhill Townhouses which is subsequently annexed.

SECTION 3. "Lot" shall mean and refer to any numbered or lettered plot of land shown upon any recorded subdivision map of the Properties.

SECTION 4. "Common Area" shall mean the parking areas, driveways, sidewalks, lawns, shrubbery and other landscaping and improvements in these areas, which are marked as such on the plat.

SECTION 5. "Declarant" shall mean and refer to DMI Corporation, a Virginia Corporation, its successors and assigns.

SECTION 6. "Association" shall mean and refer to the Foxhill Townhouse Homeowners Association, Inc. Every Owner shall be a member of the Association.

## ARTICLE II

### Architectural Control and Maintenance

SECTION 1. Improvements. No landscaping, building, fence, well or other structure shall be commenced, erected or maintained upon any Lot, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and locations of the same shall have been submitted to and approved in writing by the Declarant as to harmony of external design and location in relation to surrounding structures, landscaping and topography. Any changes, deletions or additions to the improvements or the Lots shall be subject to the approval of the Declarant or the Association.

**SECTION 2. Maintenance and Repair.** The Declarant or the Association shall repair and maintain the exterior of the improvements and maintain landscaping on Lots. The repair and maintenance of improvements shall be limited to the painting and staining of all exterior surfaces and to such other minor, routine maintenance of exterior surfaces as in the judgment of the Declarant or the Association is deemed necessary in order that the residences present a well-kept appearance. The repair and maintenance shall not include (1) repair or replacement of glass; (2) structural defects; and (3) substantial capital replacement, such as roof and siding replacement, except as provided in the article covering "Insurance" hereof. The maintenance of landscaping on Lots shall include such pruning, mowing, cultivating, feeding, fertilizing, mulching and replacement of lawns and plants, and such removal of leaves, plants and clippings, and maintenance of fences, hedges, walks, driveways and parking areas as in the judgment of the Association deemed necessary in order that the landscaping presents a well-kept appearance. The costs of the aforesaid maintenance and repair shall be assessed by the Association as a common expense, to be borne equally by all Owners of Lots located within the parcel to which this Declaration is applicable.

The Association does not assume responsibility for watering lawns, trees, shrubbery or other landscaping on Lots (said watering being the responsibility of each Owner as to his Lot), but the Association reserves the right to do such watering if deemed by the Association to be necessary or desirable to and to use the water service of such Lot for that purpose.

In the event, however, that the need for maintenance, repair or replacement is caused through the willful act or failure to act of the Owner, his family, guests, invitees or lessees, the entire cost of such maintenance, replacement or repairs shall be added to and become a part of the assessment to which such Lot is subject.

**SECTION 3.** Drainage. No obstruction, diversion, bridging or confining of existing channels upon, under and/or across any portion of said property through which water, in time of storms, or otherwise naturally flows, or through which water has been caused to flow artificially by Declarant in the development of the said property shall be made by any person in such a manner as to cause damage to any property. The Declarant may determine that a new channel or a diverted, bridged or reconstructed existing channel is adequate to carry the amount of storm and other water liable to flow therein, and may approve the same; provided, however, that the right is hereby expressly reserved to Declarant, as an inducement to the development of the entire property, to change existing channels for the natural flow of water and also create channels and means of artificial drainage and water flow and, further, to cause reasonable increases or decreases in the amount of water which would in a state of nature flow into and through any such natural or artificial water channels or means of drainage.

**SECTION 4.** Entry for Maintenance. The Association or its agents shall have an easement of entry on any Lot when necessary to perform any maintenance, landscaping or construction for which the Association is responsible. Such entry shall be made with as little inconvenience to the Owners as practicable, and any damage caused thereby shall be repaired by the Association out of the common expense fund.

### ARTICLE III

#### Party Walls

**SECTION 1.** Definition of Party Walls. The side wall of each dwelling constructed along the side line of any Lot abutting the side line of another Lot shall be a party wall, and the Owners of each such abutting Lot shall have an easement to use such wall as a support for the dwelling constructed or to be constructed on his respective Lot. Declarant, and any assignee to whom such

easement of support is expressly assigned, reserve the right, whether or not such easement is expressly reserved in any deed of conveyance of any Lot, to grant such easement of support to the purchaser of any Lot. The cost of maintaining any such party wall shall be borne equally between the abutting Lot owners using such party wall for support and so long as such wall is so used.

SECTION 2. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this article, the general rules of law regarding party walls and liability for property damage due to negligence, or willful acts, or omissions shall apply thereto.

SECTION 3. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

SECTION 4. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a large contribution from the others under any rule of law regarding the liability for negligent or willful acts or omissions.

SECTION 5. Weatherproofing. Notwithstanding any other provision of this article, an Owner who, by his negligent or willful act causes the party wall to be exposed to the elements, shall bear the whole cost of furnishing the necessary protection against such elements.



SECTION 6. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this article shall be appurtenant to the land and shall pass to such Owner's successor in title.

SECTION 7. Arbitration. Any dispute arising out of or relating to this Article, or the breach thereof, shall be settled by arbitration in accordance with the Rules of the American Arbitration Association, and judgment upon the award may be entered in any Court having jurisdiction thereof.

#### ARTICLE IV

##### Use Restrictions

SECTION 1. Single Family Residences. Each Lot shall be used exclusively for residential purposes and no building shall be erected, altered, placed or permitted to remain thereon other than one single family dwelling approved pursuant to Article II of this Declaration (hereinafter referred to collectively as "dwellings" or severally as "dwelling").

SECTION 2. Reservation for Utility Installation. Declarant reserves for the benefit of itself, its successors and assigns, and the City of Harrisonburg, the right to use the streets and parking areas shown on the aforementioned plat for ingress and egress in connection with the installation, repair, maintenance and/or replacement of utility lines of every kind and description within said streets, and for any other lawful purposes. The Declarant dedicates to the City of Harrisonburg by the recordation of any subdivision plat of the Property, easements for the installation, repair, maintenance and/or replacement of utility and drainage facilities within the areas reserved for and designated "Utility Easement" on the aforementioned plat. No private water or sewage disposal system shall be maintained on any Lot.

SECTION 3. Front, Side and Rear Yards. No structure of any kind, including fences, shall be erected in any front or side yard. Accessories such as buildings, decks, fences, walls and other structures may be constructed in the rear yard, but are subject to the written approval of the Declarant or the Association.

SECTION 4. Noxious or Offensive Activity. No obnoxious or offensive activity shall be conducted or permitted on any of the Properties, and nothing shall be done thereon which may be or become an annoyance or a nuisance to the neighborhood. No business or profession of any kind or nature shall be carried on or practiced in any dwelling without the express written consent of Declarant.

SECTION 5. Trailers, Campers, Boats. No structure, trailer, tent, shack, barn, garage, or other outbuilding shall be used on any of the Properties at any time as a residence, either temporarily or permanently. Nor shall any boat, boat trailer, school bus, or any truck over 3/4 ton, camper or camping trailer, or other mobile living or recreational vehicle, be stored, parked or kept on any of the Properties.

SECTION 6. Pets. No pets of any kind or description shall be allowed to be maintained on or in any of the Properties, with the exception of fish, so long as they are exclusively maintained indoors.

SECTION 7. Signs. No sign of any kind shall be displayed to the public view on any of the Properties, except contractors' signs during construction period and one professional real estate sign of no more than six square feet, advertising a Lot, and any dwelling constructed thereon, for sale or for rent. No person shall post any advertisements, or posters of any kind in or on the Properties.

Parking signs, parking direction signs, traffic direction signs, and no solicitation signs are excluded from this prohibition.

**SECTION 8.** Trash Receptacles. The Properties shall not be used or maintained as a dumping ground for rubbish or scrap. Trash, garbage or other waste shall not be kept on any of the Properties except in covered sanitary containers. Trash, leaves, or other similar material shall not be burned.

**SECTION 9.** Exterior Wiring/Antennae/Clothes Lines. No owner, resident or lessee shall install wiring for electrical or telephone installation, machines or air conditioning units, etc., on the exterior of any building or structure or in a way that causes same to protrude through the walls or the roof of any building or structure. Exterior television or other antennae, or dishes, are prohibited. Clothes lines or other clothes drying apparatus shall be screened from public view.

**SECTION 10.** Vehicles. Inoperative or unlicensed cars, trucks or other vehicles shall not be parked or stored on streets or parking areas. Motorized vehicles using private streets and parking areas must be properly licensed and inspected by the State and drivers must have a valid operators license.

**SECTION 11.** Restriction on Use as Hotel. The respective Lots shall not be rented by the Owners thereof for transient or hotel purposes, which shall be defined as (a) rental for any period less than thirty (30) days; or (b) any rental if the occupants are provided customary hotel services, such as room service for food and beverage, furnishing laundry and linen, and bellboy service. Other than the foregoing obligations, the Owners of the respective Lots shall have the absolute right to lease same provided that said lease is made subject to the covenants and restrictions contained in this Declaration.

**SECTION 12.** Parking Lots. All parking lots within the Common Area are reserved for the use of the Owners, their guests and invitees only. Spaces shall be unassigned and available on a first come first serve basis.

## ARTICLE V

### Easements

**SECTION 1.** Easement for Encroachments. If any improvements on any Lot now encroaches upon any other Lot as a result of the construction or repair of the improvements, or if any such encroachment shall occur hereafter as a result of settlement or shifting of any improvements, or otherwise, a valid easement for the encroachment and for the maintenance of the same, so long as the improvement stands, shall exist. In the event any improvements shall be partially or totally destroyed as a result of fire or other casualty, or as a result of condemnation or eminent domain proceedings, and then reconstructed, thus causing encroachments of any improvement of any Lot upon any other Lot, a valid easement for such encroachments and the maintenance thereof shall exist so long as the improvement shall stand.

**SECTION 2.** Overhanging Roofs and Eaves. The owner of each Lot is hereby declared to have an easement and the same is hereby granted by the Declarant, over each adjoining Lot and Common Areas, for overhanging roofs, eaves and the maintenance thereof.

**SECTION 3.** Easements of the Association. There is hereby reserved to the Association such easements as are necessary to perform the duties and obligations of the Association.

**SECTION 4.** Pipes, Ducts, Cables, Wires, Conduits. Each Owner shall have an easement in common with the Owners of all other Lots to use pipes, wires, ducts, cables, conduits, telephone and public utility lines. The Association, its agents, and such telephone, electric and other utility

companies as may be appropriate (but no other person or entity without the consent of the Owner) shall have the right of access to each Lot to inspect the same, to remove violations therefrom, and to maintain, repair or replace the common elements contained therein or elsewhere in the living units.

**SECTION 5. Easements Over Sidewalks.** Each Owner is hereby declared to have an easement and the same is hereby granted by the Developer over all paved sidewalks located on all Lots for the sole purpose of pedestrian ingress to and egress from the Lots.

**SECTION 6. Priority of Easements.** Each of the easements hereinabove referred to shall be deemed to be established upon the recordation of this Declaration and shall run with the land for the use and benefit of the Lots and the Common Area, superior to all other encumbrances which may hereafter be applied against or in favor of the properties or any portion hereof.

## ARTICLE VI

### Insurance

The risk of loss or damage to the property by fire, windstorm, casualty or other cause is the responsibility of each Owner. Every Owner shall also maintain his own liability insurance. Hazard insurance must have a Class VI or better rating as reflected in the most recent edition of Best's Rating Guide. Each owner shall name the Homeowner's Association individually as an additional insured party in their policy for the benefit of the other Lot owners without naming them. A proper mortgage endorsement clause shall be attached to the policy with a loss payable clause in favor of the mortgagees on each Lot and the Homeowner's Association as their interest may appear. Each Owner shall provide proof of such insurance upon purchase of Lot, and provide proof of renewal no less than annually .

## ARTICLE VII

Common Areas

The Common Areas applicable to this development shall be those designated on the plat. All costs of maintaining and operating the Common Area, including without limitation the cost of replacements, improvements, insurance and real estate taxes shall be assessed as a common expense, to be borne by the Association.

Nothing shall be done or kept in any Lot or Common Area which will increase the rate of insurance on any Lot or Common Area, without the prior written consent of the Association. No Owner shall permit anything to be done or kept in his Lot or in the Common Area which will result in the cancellation of insurance on any Lot or any part of the Common Area, or which would be in violation of any law. No waste will be committed to the Common Area.

There shall be no obstruction of the Common Area. Nothing shall be stored in the Common Area without the prior written consent of the Association.

Nothing shall be altered or constructed in or removed from the Common Area, except upon the written consent of the Association.

The Association is authorized to adopt rules for the use of the Common Area and furnish the same in writing to the Owners, and there shall be no violation of such rules as are adopted.

In the event that any taxing authority having jurisdiction over the Properties shall levy or assess any tax or special assessment against the Properties, as a whole, as opposed to levying such tax or special assessment against each Lot now levied and assessed, then such tax or special assessment so levied shall be paid by the Association.

ARTICLE VIII

Reconstruction or Repair After Casualty  
and Eminent Domain

**SECTION 1.** Reconstruction and Repair. If any part of the properties shall be damaged by casualty, it shall be reconstructed or repaired. Such reconstruction or repair shall be commenced within a reasonable time, and in no event later than ninety (90) days after the occurrence of the casualty, and such repairs or reconstruction shall be prosecuted thereafter with due diligence until completion.

**SECTION 2.** Plans and Specifications. Any reconstruction or repair must be substantially in accordance with the Plans; or according to plans and specifications approved by the Homeowner's Association and their mortgagees, which approvals shall not be unreasonably withheld.

ARTICLE IX

Compliance and Default

**SECTION 1.** Compliance with Bylaws, Regulations and Covenants Damages; Injunctions. Each Lot owner and his family and his or their guests, employees, agents and lessees and their guests, employees and agents, shall comply strictly with the Bylaws of the Association and the administrative rules and regulations adopted pursuant thereto. Acquisition, rental or occupancy of a Lot shall constitute an acknowledgment that the Lot owner, tenant or occupant agrees to be bound by the provisions of this Declaration. Failure to comply with any of the same shall be grounds for an action to recover sums due or for damages or for injunctive or any other relief, or any combination thereof, maintainable by the Association on behalf of the other Lot owners or in a property case, by an aggrieved Lot owner.

**SECTION 2.** Negligence. A Lot owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his willful or negligent act or omission or by that of any member of his family or his or their guests, employees, agents, or lessees, or their guests, employees and agents.

**SECTION 3.** Costs and Attorney's Fees. In any proceeding arising because of an alleged failure of a Lot owner or the Association to comply with the terms of the Declaration, Articles of Incorporation of the Association, the Bylaws, or the rules and regulations adopted pursuant to them, as they or any of them may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding, and such reasonable attorney's fees as may be awarded by the Court.

**SECTION 4.** No Waiver of Rights. The failure or delay of the Association or any Lot owner to enforce any covenant and restriction of the Declaration, the Articles of Incorporation of the Association, the Bylaws of the Association, or the rules and regulations adopted pursuant to them, shall not institute a waiver of the rights to do so thereafter.

## ARTICLE X

### General Provisions

**SECTION 1.** Enforcement. Any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.



SECTION 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provision which shall remain in full force and effect.

SECTION 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall automatically be extended for successive periods of ten (10) years. This Declaration may be amended by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded.

SECTION 4. Protection of Mortgagees. The rights under this Declaration of a holder of a first lien on a Lot shall not be adversely affected by any amendment unless the amendment is approved by such lienholder as provided herein. A copy of any proposed amendment shall be furnished to all bona fide first lienholders, and unless the disapproval of any such amendment is received within thirty (30) days of the giving of such copy, the amendment shall be conclusively deemed approved by such lienholder.

SECTION 5. Provision For Benefit of Mortgagees. All provisions of this Declaration requiring the Association to maintain common elements, to collect assessments, and to make any repairs, and all restrictions in this Declaration are intended for the benefit of, and may be enforced by, either a Lot owner or any mortgagee of a Lot.

SECTION 6. Consent of First Mortgagees. Notwithstanding, and in addition to, any provisions of this Declaration, the Bylaws, or the Rules and Regulations, if, when and as promulgated, unless seventy-five percent (75%) of the mortgagees (based upon one (1) vote for each mortgage owned) have given their prior written approval, the Association and the Board of Directors

shall not be entitled to: (i) change the prorata interest or obligations of any Lot for (a) purposes of levying assessments or proceeds of condemnation awards or for (b) determining the prorata share of ownership of each Lot in the common elements; (ii) partition or subdivide any Lot; (iii) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the common elements; provided that the granting of easements for public utilities or for other public purposes consistent with the intended use of the common elements shall not be deemed a transfer within the meaning of this clause.

SECTION 7. Priority of First Mortgagees. No provision of this Declaration, the Bylaws, or the Rules and Regulations, if, when and as promulgated, shall be construed to grant to any Lot owner, or to any other party, any priority over any rights of first mortgages of the Lots pursuant to their first mortgages in the case of a condemnation award for the taking of Lots and/or the common elements or any portions thereof.

SECTION 8. Annexation. Additional residential property and Common Area shown on the master plan of Foxhill Townhouses may be annexed to the Property by the Declarant without the consent of any other party within ten (10) years of the date of recordation of this Declaration.

## ARTICLE XI

### Common Expense

SECTION 1. Assessment. A special closing assessment in the amount of Two Hundred and No/100 Dollars (\$200.00) shall be collected at settlement from each purchaser of a Lot from the Declarant and from all subsequent owners of any Lot. The special closing assessment shall be in addition to, and not in lieu of any other assessment established pursuant to this Declaration.


The initial assessment for common expenses shall be Fifty and No/100 Dollars (\$50.00) per month. The Association has the right to change the assessment from time to time. Any sum of common expenses required to be paid hereunder, which is not paid when due, is delinquent. If the share of common expenses is not paid within thirty (30) days of the due date, the share of common expenses shall bear interest at the legal rate from the due date. Failure to pay the assessment for common expense may create a lien on the Lot. The Homeowner's Association or any Owner or Owners, individually or collectively may bring an action at law against the Owner obligated to pay same. Any action at law so instituted shall include the right to collect the delinquent amount and interest plus costs and reasonable attorney's fees.

**SECTION 2. Rights of First Mortgagees.** Where an institutional mortgagee of a first mortgage of record or other purchaser of a Lot obtains title as a result of foreclosure of the first mortgage, such purchaser, his successor and assigns, shall not be liable for (and no lien shall exist on such lot for) the share of the common expenses or assessments of the Association chargeable to such Lot which became due prior to the acquisition of title to such purchaser. Nothing herein shall be construed to relieve the prior Lot owner-mortgagor of his personal obligation to pay such unpaid share of common expenses or assessments.

WITNESS the following signature and seal:

DMI CORPORATION

By

  
Sterling M. Nichols, President-  
Larry R. McCardle, Vice President

COMMONWEALTH OF VIRGINIA

COUNTY OF JAMES CITY, to-wit:

The foregoing instrument entitled Declaration of Covenants, Conditions and Restrictions of Foxhill Townhomes, was acknowledged before the undersigned Notary Public, in and for the jurisdiction aforesaid, by Larry R. McCardle, Vice President of DMI Corporation, a Virginia corporation, this 15 day of April, 1998.

Marcell W. Moore  
NOTARY PUBLIC

My commission expires: 10-31-2000

B 1 5 9 9 P 7 1 4  
EXHIBIT A

All that certain land containing 1.108 acres as more particularly shown and described on a plat of survey dated May 11, 1998, entitled "FOXHILL TOWNHOMES SECTION TWO, PHASE ONE", prepared by Benner and Associates, Inc. which plat is recorded in the Clerk's Office of the Circuit Court of Rockingham County, Virginia, in Deed Book 1585, at page 145.

VIRGINIA: In the Clerk's Office of the Circuit Court of Rockingham County  
The foregoing instrument was this day presented in the office of the Clerk  
together with the certificate of preparation of the same  
\_\_\_\_\_ day of July 1998 346  
taxes were paid when recorded  
Sec. 58-54 - State \_\_\_\_\_  
Sec. 58-54.1 - State \_\_\_\_\_  
Recording W.W. \_\_\_\_\_  
L. WAYNE HARPER  
CLERK  
Deed Book No. 1599 Page 697

540-1-1045  
RECORDED  
JUL 14 1998

016040