

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF TIVOLI SUBDIVISION**

**STATE OF ALABAMA
LEE COUNTY**

KNOW ALL MEN BY THESE PRESENTS, that:

WHEREAS, LCR Tuscany, L.L.C. (hereinafter referred to as “Declarant”) is the Owner of Lots 1 - 13 in Tivoli Subdivision Phase 1A (hereinafter referred to as “Tivoli Subdivision Phase 1A”), located in Auburn, Lee County, Alabama, as shown by the plat of Tivoli Subdivision Phase 1A recorded in Plat Book __ at Page __ in the Office of the Judge of Probate of Lee County, Alabama (the “Phase 1A Plat”); and

WHEREAS, Declarant has previously sold Lot 14 in Tivoli Subdivision Phase 1A as a cluster home and the current owners desire to keep their property protected by this Declaration of Covenants, Conditions, and Restrictions of Tivoli Subdivision and will subject their property to the same by a separate Ratification of Covenants, Conditions, and Restrictions of Tivoli Subdivision to be filed subsequent to this instrument; and

WHEREAS, Auburdan, Inc. (hereinafter referred to as “Auburdan”) is the Owner of Lots 15, 19-23, 27, 28, 30-41, 44-54, 56, 58, and 60 in Tivoli Subdivision Phase 1 B (hereinafter referred to as “Tivoli Subdivision Phase 1B”), located in Auburn, Lee County, Alabama, as shown by the plat of Tivoli Subdivision Phase 1B recorded in Plat Book __ at Page __ in the Office of the Judge of Probate of Lee County, Alabama (the “Phase 1B Plat”) and desires to join Declarant in subjecting all Lots owned by it to these Covenants; and

WHEREAS, Danielly, LLC. (hereinafter referred to as “Danielly”) is the Owner of Lots 16, 17, 24, 25, and 59 in Tivoli Subdivision Phase 1B located in Auburn, Lee County, Alabama, as shown by the plat of Tivoli Subdivision Phase 1B recorded in Plat Book __ at Page __ in the Office of the Judge of Probate of Lee County, Alabama (the “Phase 1B Plat”) and desires to join Declarant in subjecting all Lots owned by it to these Covenants; and

WHEREAS, it is the present intention of Declarant, Auburdan, and Danielly for Tivoli Subdivision to include single family residential lots and lots designed for Cluster Homes that Declarant has previously constructed in the Subdivision; and

WHEREAS, the Declarant desires to subject certain portions of Tivoli Subdivision Phase 1A and Auburdan and Danielly desires to subject Tivoli Subdivision Phase 1B to these restrictions, and impose thereon, mutual and beneficial restrictions, covenants, terms, conditions and limitations (herein for convenience sometimes referred to collectively herein as “Restrictions”) for the mutual benefit of all the lots in the Subdivision.

NOW, THEREFORE, Declarant does hereby proclaim, publish and declare that Lots 1-13, Lot 14 by ratification of the owner(s), in Tivoli Subdivision Phase 1A, and Auburdan and Danielly hereby proclaim, publish, and declare Lots 15, 16, 17, 19-23, 24, 25, 27, 28, 30-41, 44-54, 56, 58, 59, and

60 in Tivoli Subdivision Phase 1B, all as shown on the Phase 1A Plat and the Phase 1B Plate, respectively (herein both phases are referred to collectively as the "Subject Property") are subject to, held and shall be held, conveyed, hypothecated or encumbered, rented, used, occupied, and improved subject to the following restrictions which shall run with the land and shall be binding upon Declarant, Auburden and Danielly and upon all parties having or acquiring any right, title or interest in and to each such Lot or any part or parts thereof subject to such restrictions. The restrictions contained herein shall apply to each Lot forming part of the Subject Property, as well as to any future phases which the Declarant may submit to this Declaration as Additional Property.

1. DEFINITIONS. As used throughout this Declaration, the following terms shall have the meanings set forth below, which meanings shall be applicable to both the singular and plural forms and tenses of such terms:

1.1 Additional Property. The term "Additional Property" shall mean and refer to any real property and any Improvements situated thereon lying adjacent to or in close proximity with the Subject Property (but which does not presently comprise any part of the Declarant) which Declarant may from time to time submit and add to the provisions of this Declaration.

1.2 Cluster Home. The term "Cluster Home" shall mean a residential living unit that is connected with other residential living units that share a common structure of which up to four residential units are maintained on adjoining Lots.

1.3 Dwelling. The term "Dwelling" means the structure used as a residential living unit located upon a Lot, including the garage and any appurtenances.

1.4 Lot. The term "Lot" shall mean and refer to any unimproved designated portion of the Property upon which it is intended that a Dwelling be constructed thereon. Upon the recordation of any subdivision plat for any portion of the Property, each lot indicated thereon shall be deemed a Lot for purposes of this Declaration. A parcel of land shall be deemed unimproved and thus considered to be a Lot rather than a Dwelling, until the Improvements constructed thereon are sufficiently complete and certificate of occupancy has been issued by the City of Auburn. Upon such completion, such Lot and the Improvements thereon shall collectively be considered to be a Dwelling for purposes of this Declaration.

1.5 Owner. The term "Owner" means any person, firm, corporation, partnership, association, trust, Limited Liability Company or other legal entity or any combination thereof which owns the fee simple title to a Lot.

1.6 Architectural Control Committee. The term Architectural Control Committee or ACC shall refer to the committee appointed by Declarant pursuant to paragraph 4 of this Declaration.

2. GENERAL DECLARATION. Declarant hereby declares that the Subject Property is and shall be subject to the easements, covenants, conditions, restrictions, charges, liens, and regulations of this Declaration; and each Lot, Dwelling, and common area thereof shall be held, owned, sold, transferred, conveyed, hypothecated, encumbered, leased, occupied, built upon, and

otherwise used, improved, and maintained subject to the terms of this Declaration, which easements, covenants, conditions, restrictions, charges, liens, and regulations shall run with the title to the property and shall be binding upon and inure to the benefit of Declarant and upon the Owner and Occupants.

2.1 Declarant Rights. Declarant shall have the right, but not the obligation, for so long as Declarant owns any Lot or Dwelling in the Subdivision, to make improvements and changes to all common areas and to all lots or dwellings owned by Declarant, including without limitation: (i) installation and maintenance of any improvements in or to the common areas; (ii) changes in the location of the boundaries of any lots or dwellings owned by Declarant or of the common areas; and (iii) installation and maintenance of any water, sewer, and any other utility systems or utility easements and facilities within the common areas.

2.2 Additional Property. Declarant reserves the right, in its sole discretion, at any time and from time to time to add Additional Property to the provision of this Declaration. At the time any Additional Property is specifically submitted to the terms and provisions of this Declaration, then such Additional Property shall constitute part of the Subject Property. Submission of Additional Property need not be consented to or approved by any Owner, Occupant or Mortgagee of any Lot or Dwelling. An amendment to this Declaration shall refer to this Declaration stating the book and page number of recordation in the land records of Lee County, Alabama, where this Declaration is filed for record and contain a description of the Additional Property, and shall state that said Additional Property is conveyed subject to the terms and conditions in this Declaration. The number of votes in the Association shall be increased by the Number of Lots or Dwellings within the Additional Property which are added and submitted to the Declaration and there shall continue to be one vote in the Association per Lot or Dwelling within the Declarant.

In no event shall Declarant be obligated to submit any Additional Property to the provisions of this Declaration situated adjacent to or in close proximity with the Declarant. Notwithstanding anything provided in this Declaration to the contrary, the provisions in this article may not be modified, rescinded, supplemented or amended, in whole or part, without prior written consent of Declarant, its successors or assigns.

2.3 Subdivision Plat. Declarant reserves the right to record, modify, amend, revise, and otherwise add to, at any time and from time to time, a subdivision plat setting forth such information as Declarant may deem necessary with regard to the Declarant, including, without limitation the locations and dimensions of all Lots, Dwellings, common areas, additional property, public or private roads, utility systems, drainage systems, utility easements, drainage easements, access easements, set-back line restrictions, retention ponds, and drainage basins. Any such subdivision plats or any amendments thereto shall be binding on the portions of the Subject Property indicated thereon as if such subdivision plat were specifically incorporated into this Declaration and no approval thereof shall be required by any Owner, Occupant or Mortgagee of any Lot or Dwelling. Notwithstanding anything provided to the contrary in this Declaration, Declarant may at any time, or from time to time, divide and re-divide, combine and re-subdivide any Lot owned by Declarant.

2.4 Reservation of Maintenance Easement. Declarant does hereby establish and reserve for the Association, its agents, employees, heirs successors and assigns a permanent and perpetual right and easement to enter upon any Lot or Dwelling for the purpose of mowing, removing, clearing, cutting, pruning underbrush, weeds, stumps or other unsightly growth and removing trash so as to maintain reasonable standards of health, fire, safety and appearance within the Declarant. Said easement shall not impose any duty or obligation upon Declarant or the Association to perform any of the foregoing actions.

3. USE AND BUILDING STANDARDS. All Lots are restricted to private residences and shall not be improved, used or occupied for other than single family residence purposes; provided however, that shall prohibit the Declarant from using any Lot as an office or modeled for sales and promotion purposes. No Lot shall be subdivided without the consent of the Declarant and/or the Architectural Control Committee.

3.1 Building Location. No building shall be erected nor located on any lot nearer to the right of way line than the minimum building setback lines as required by the City of Auburn. These minimum setback line restrictions shall also apply to the garage. If the Owner of one lot, however, shall purchase a second lot, and the second lot purchased adjoins the first, the setbacks for the side lot line may be waived by the Owner and said Owner may construct a dwelling house on both said lots, subject to the front lot line and rear lot line setback requirements, and these restrictive covenants herein set out shall govern both said lots as one unit, including limiting the Owner to one vote since the lots are utilized as one unit and the lot Owner may not thereafter sell either lot or any part thereof separately, but the lot Owner must sell the two (2) lots as one track or parcel of land. For purposes of this section, eaves, steps and open porches shall not be considered as a part of the structure; provided, however, that this shall not be construed so as to prevent any portion of a structure on a lot be located nearer than required side lot line or any structure on an adjacent lot, whichever is greater. The Architectural Control Committee shall determine the building location as set forth in paragraph 19 herein.

3.2 Completion Date. Construction of a dwelling shall begin within a period of two (2) years from the date on which a Lot is conveyed by the Declarant to the purchaser thereof, unless such two (2) year period is extended by a written instrument duly executed by the Declarant. During the period before construction, following conveyance by Declarant and during the period prior to construction, the Lot shall be mowed and maintained by the Lot owner. Construction of a Dwelling shall be by a duly licensed contractor(s) or by the lot Owner(s). Construction of any Dwelling shall be completed within one (1) year from the date of beginning, unless a waiver from the required completion date shall have been approved in writing by the Architectural Control Committee. Residency in any dwelling shall not be permitted until the City of Auburn has issued a certificate of Occupancy.

3.3 Single Family Dwelling. No Dwelling shall be erected, altered, placed or permitted to remain on any Lot other than one (1) single family dwelling not to exceed Two and One-half (2½) stories in height unless otherwise approved, in writing, by the Architectural Control Committee.

3.4 Dwelling Unit Size. No Dwelling Unit shall be permitted on any Lot with a living floor (heated) area of the main structure, exclusive of porches, whether one or two story or whether

screened or not, basements, walk out basements and lower level and garages, of less than 2350 square feet on Lots located in Tivoli Subdivision Phase 1A and no less than 1400 square feet on Lots located in Tivoli Subdivision Phase 1B. Exceptions may be made in square footage requirements only if approved by Declarant and the Architectural Control Committee in writing.

3.5 Materials. Prior to construction, plans, landscaping, colors and material selections must be approved by the Architectural Control Committee. All buildings shall be constructed of materials approved by the Architecture Control Committee. It is the desire of the Declarant for homes to be constructed in such a manner that the exteriors will require little maintenance. Any exposed block foundations shall be mortar-washed or stuccoed. The exterior of any Dwelling constructed must be masonry or stucco on at least three sides; rear exterior material may be stucco, stone, fiber cement or brick. Exceptions to this can be only by unanimous written consent of the Architectural Control Committee. The roof pitch of all residences shall be not less than eight (8) inches/twelve (12) inches, and shall maintain a minimum of a one (1) foot overhang. Soffit and fascia materials may be vinyl.

3.6 Single Family Dwelling. No Lot or Dwelling shall be used for any purpose other than as a single-family residence except that each home may maintain a home office for use.

4. STRUCTURE AND POWERS OF ARCHITECTURAL CONTROL COMMITTEE: The Tivoli Subdivision Architectural Control Committee ("Committee") is hereby created and shall consist of three (3) persons appointed by LCR Tuscany, L.L.C. or its successors and assigns who shall serve until they are removed or have resigned; provided that so long as LCR Tuscany owns any lots in the Subdivision, Leslie T. Letlow shall serve on the Committee. This Committee may designate any one of its members to act on its behalf. In the event of a vacancy on the Committee, LCR Tuscany, L.L.C. shall have the authority to appoint a replacement. The Committee shall have the authority and power to approve all plans and specifications for all structures to be erected in the Subdivision. Said Committee may act as a representative of the Owners of the lots in the Subdivision and may act to enforce the covenants and restrictions herein by due process of law.

4.1. Approval by Architectural Control Committee. No building or other structure shall be erected, constructed, placed, maintained or altered on any lot in this Subdivision until the building plans (including floor plans, external design, location with respect to lot lines, topography and finished grade elevations), specifications and site plan showing the location of such building and driveway, have been approved in writing by the Architectural Control Committee. Two (2) sets of complete plans must be furnished, one (1) of which will be retained in the office of the Committee and one (1) will be returned to the owner and/or builder. The Committee's approval or disapproval, as required in this Declaration shall be in writing. No structure of any kind which does not fully comply with such approved plan shall be erected, constructed, placed or maintained upon any lot, and no changes or deviations in or from such plans as approved shall be made without the Committee's prior written consent. In the event the committee, or its designated representative, fails to approve or disapprove such design or location within ten (10) business days after said plans and specifications have been submitted to them and if no suit to enjoin the erection of such building or the making of such alterations has been commenced prior to completion thereof, such approval will not be required and this covenant shall be deemed fully complied with. The plans must show floor plan, quality of construction, materials, outside colors to be used and harmony of external design

with existing structures and location with respect to lot lines, topography and finish grade elevations.

4.2 Liability of Declarant and Committee Members. Neither Declarant nor the Architectural Control Committee nor any member thereof nor any of their respective heirs, personal representatives, successors or assigns, shall be liable to anyone by reason of any mistake in judgment, negligence or non-feasance arising out of or relating to the approval or disapproval or failure to approve any plans so submitted, nor shall they, or any of them, be responsible or liable for any structural defects in such plans or in any structure erected according to such plans or any drainage, problems resulting therefrom. Every person and entity which submits plans to the Committee agrees, by submission of such plans, that the party making the submissions will not bring any action or suit against the Committee, the Declarant or either of them to recover any damages or require the Committee or its representative to take or refrain from taking any action. Neither the submission of any complete set of plans to the Declarant or to the Committee for review by the Committee, nor the approval thereof by the Committee, shall be deemed to guarantee or require the actual construction of the building or structure therein described, and no adjacent lot owner may claim any reliance upon the submission and/or approval of any such plans or the buildings or structures described therein.

4.3 Committee Vacancies. In the event there is any vacancy created in the Committee, Declarant, its successors and assigns, shall have the right to appoint another person to fill said vacancy. If there be no Declarant nor its successors and assigns, then Seventy Five (75%) percent of the record title Owners of the lots may elect by a majority vote of said Seventy Five (75%) percent, the Architectural Control Committee.

4.4 Architectural Control Committee Expiration. The authority of the Committee shall expire Twenty (20) years after the date of the recording of the Phase 1A Plat and Phase 1B Plat. Declarant may, at any time, relinquish its right to designate a Committee member or to fill any vacancy on the Committee and upon its written relinquishment of the same, any vacancy on the Architectural Control Committee shall be filled by an election of the majority of Seventy Five (75%) percent of the Owners.

4.5 Building Restriction and Architectural Control Guidelines.

SEE EXHIBIT A for Tivoli Phase 1A , which is attached hereto.

SEE EXHIBIT B for Tivoli Phase 1B, which is attached hereto.

5. EASEMENTS. Drainage and utility easements shall be designated on the plat of the subdivision. Declarant reserves all rights as delineated in Section 2.4 of these Covenants.

6. PERIMETER FENCING AND RETAINING WALLS. The only perimeter fencing permitted shall be from the rear corners of each dwelling not more than six foot in height. The Architecture Control Committee shall determine the materials and style of fence to be constructed based on the

plans submitted which must conform to present architectural standards as set by the style of home thereon built and be approved by the Architectural Control Committee in writing, unless a variance from this fence requirement shall have been approved in writing by the Architectural Control Committee. This paragraph is not to be construed to prohibit the planting or maintenance of hedges, shrubbery or trees. No fencing to be installed in easement areas or front yards unless approved in writing by the Architectural Control Committee. Retaining walls along a perimeter lot line that poses a significant danger because of the drop off shall utilize a protective landscape screening. The Architectural Control Committee must approve all retaining walls in writing.

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

8. TEMPORARY STRUCTURES. No structure of a temporary character, trailer, tent, shack, garage, barn or other outbuilding of any type or nature shall be used on any lot at any time as a residence, temporarily or permanently. This covenant, however, shall not be construed to prohibit a construction trailer or the erection of a temporary field office by the Declarant or by another Builder or Contractor with written permission from Declarant, that is used during construction of a residential dwelling. Semi-Tractor and trailer, school buses, mobile homes, motor homes and house trailers are prohibited from being parked at any time on any Lot or any street in the subdivision.

9. POOLS & PLAYGROUND EQUIPMENT. No above ground pools shall be permitted. No playgrounds shall be permitted unless approved in writing by the Architectural Control Committee. Evergreen screening around playground equipment may be required at the discretion of the Architectural Control Committee. No structures of any kind are allowed in the front yard, or side yards on corner lots. Basketball goals, or other similar type recreational structures, cannot be placed in street right-o-ways to allow for using the street as a court.

10. DETACHED BUILDINGS. The construction and placement of not more than one (1) detached storage or pet shelter structures (maximum 200 square feet) to be used for the storage of lawn tools, toys, or any other personal property or for the shelter of pets must be of a quality construction and must be maintained in attractive and neat appearance and compliment the architecture of the established home as determined by the Architectural Control Committee. All building and site plans for detached buildings shall be submitted to the Architectural Control Committee for review and approval before beginning construction. Any such detached buildings erected shall be erected near the rear one-half (1/2) of said lot and match the decor of the present residential dwelling. The placement and construction of the detached structures are to be submitted to the Architectural Control Committee and must be in compliance with the City of Auburn building and set back requirements. The Architectural Control Committee shall have the authority to approve or disapprove the placement and construction of detached storage structures, and once approved and erected, the Architectural Control Committee shall have the authority to require protective screening around any detached structure. Some lots are not conducive to the placement of detached structures and will not be allowed at the sole discretion of the Architectural Control Committee.

11. DRIVEWAYS AND SIDEWALKS. No loose stone or cinder driveways shall be permitted. All driveways are to be a minimum of twelve (12) feet wide and must be constructed of brick, stone

or concrete. If constructed of concrete, the driveway shall be at least four (4) inches thick. The Architectural Control Committee must approve any variance from the above restrictions. A minimum three (3) foot wide and at least four (4") inches thick concrete sidewalk shall be constructed from the driveway to the front entry.

12. SIGNS. No sign of any kind shall be displayed to the public view on any lot or dwelling except one sign of not more than five (5) square feet advertising the home for sale, or a sign of any dimension used by a builder or Declarant and approved by Declarant to advertise the property during the construction and sales period. There is reserved to the Declarant, its successors and assigns, the right to construct signs as they desire in order to foster the promotion and effect sales of in the Subdivision. No "For Sale By Owner" sign shall be permitted on a vacant lot advertising the asking price.

13. ANIMALS, LIVESTOCK AND POULTRY. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except dogs and cats, provided that they are not kept, bred or maintained for any commercial purposes and are not permitted to become a neighborhood nuisance or hazard in any manner. No dog or cat may be permitted to run at large.

14. DEBRIS, GARBAGE AND REFUSE DISPOSAL. No lot, or contiguous lot during the construction period, shall be used or maintained as a dumping ground for rubbish or brush. Trash, garbage, or other waste shall not be kept except in sanitary containers. During the construction period for any house, the builder or lot owner shall dispose of all construction related debris in a timely manner. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. No lot shall be used for the storage of old lumber, cars, materials or debris including grass clippings. All vacant lots shall have the weeds and brush mowed so foliage does not exceed one (1) foot in height. Said mowing shall apply to all land within the building setback line. A lien in favor of the Declarant or Association shall be granted if lot owner fails to comply with keeping vacant lot or improved lot neat in appearance, or if lot owner fails to remove a dead tree from lot in a timely fashion and Declarant or Association is forced to do so for public safety or aesthetic reasons.

15. 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 roadway shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a 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. No tree shall be permitted to remain within such distances of such intersection unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

16. COMPLETION. Any structure begun must be completed within a period of one (1) year from the date of beginning. The side and rear yards of each lot shall be planted with sod or ground cover, and landscaped unless otherwise approved by the Architectural Control Committee. Lot owner shall not permit any improvement, which has been partially or totally destroyed by fire "or other

casualty, to remain in such state for more than three (3) months from the time of such destruction or damage.

17. RECREATIONAL OR COMMERCIAL VEHICLES AND PARKING. No recreational or commercial vehicles, including but not limited to, motor homes, campers, trailers, trucks, dune buggies, or boats may be used as a temporary residence or kept in open areas in this subdivision, whether such open areas are on or off the lot of any lot owner. No vehicles of any type shall be parked on the street of the subdivision except for the temporary parking of vehicles of guests of owners of lots. Vehicles other than those for family transportation may not be stored at any lot for any period longer than twenty-four (24) hours unless said vehicles are within an enclosed garages.

18. UTILITIES AND TELEVISION ANTENNAS. All public utility services, either in the streets or on any lots, including but not limited to electric, gas, telephone service, and cable television, shall be located underground, and shall not be visible. No outside above-ground television, A.M., F.M., or short wave radio antennas of any type that are visible from the exterior ground level shall be erected or maintained on any lots or structures in this subdivision. Each Owner may, however, have on his Lot no more than one (1) satellite dish for electronic signal reception. No satellite dish may be placed in either the front or side yards of a lot. The placement and size of the satellite dishes must be approved by the Architectural Control Committee before placement on any lot. The Architectural Control Committee may also require protective screening. All street or lot lighting shall be situated on posts with no lines visible. To require owners to assume all landscaping responsibility and restoration of paved or planted areas made necessary by maintenance, replacement or expansion of the underground service facilities. Owner to assume all responsibilities and cost if owner chooses to substantially alter the grade in the utility easement, which would result in the utility company relocating their lines to provide adequate protection for said line. To require accessibility to all strips in which underground service is located for operation, maintenance, or replacement of facilities; and To require that the owner of any building erected on the property must pay any cost differential for underground service laterals.

19. BUILDINGS. The Architectural Control Committee in advance of the construction of any such improvement shall determine the placement of all buildings, including the lot and building elevations. All improvements must comply with building set back lines established by the Plat. No alterations of location or any improvement prior to construction shall be made and no improvement shall be physically placed in any other position than that located by the Architectural Control Committee without approval of the Architectural Control Committee. All expense with regard to such location placements and the actual physical staking for the location of such physical improvement shall be borne by the lot owner. The Architectural Control Committee will take into account the provisions of paragraph 3.1 of these Covenants, but shall not be limited to the minimum requirements of the City of Auburn and may impose greater restrictions on location and placement of the building as determined in its sole and absolute discretion.

20. COMPLIANCE BY BUILDER, LOT OWNER WITH SOIL EROSION PLAN. During the construction of each structure, every reasonable effort shall be made, by the builder and/or Lot Owner, to control erosion on the construction site in accordance with recommendations issued by the Best Management Practices as determined by the City of Auburn. The builder and/or Lot Owner shall indemnify and hold Declarant harmless from and against all liability, damage, loss,

claims, demands and actions of any nature whatsoever which may arise out of or are connected with, or claimed to arise out of or connected with, any work done by builder, builder's employees, agents, or subcontractors which is not in compliance with the erosion control plan implemented by the Declarant.

21. HOMEOWNERS ASSOCIATION. The "Tivoli Homeowners Association" hereinafter referred to as the "Homeowners Association", or "Association", shall be created by the Declarant. Each owner of a lot in this subdivision shall be a member of the Association and shall be entitled to cast one (1) vote at all meetings for each lot that is owned. After its creation by the Declarant, the Association shall conduct a meeting at least once annually to organize itself and to elect its officers. The Association shall levy and collect annual dues and assessments for the overall upkeep of common areas of the community. Annual dues for all Lots shall be \$200.00. Any such dues will be levied equally on each Lot. Failure to pay said assessments or annual dues shall be a violation of these covenants and restrictions. Any such assessments or annual dues shall be billed by the Association to the owner of each Lot annually. There will be no proration for a partial year of ownership. Said dues and assessments, including interest, costs of collection and attorneys' fees, if any, as hereinafter provided, shall be a lien in favor of the Association upon the lot against which such dues and assessments are charged until discharged by payment or released by the Association, which lien may, be enforced in accordance with the laws of the State of Alabama. The Association may, but need not, publicly record such notices of undischarged liens arising hereunder as it deems appropriate and may, but need not, bring a separate independent action in any court to enforce payment of, or to foreclose, the lien created hereunder. The Association may also enforce the restrictions concerning accumulations of rubbish, weeds, or trash, and may own any land for use by all or less than all of the lot owners as a "common area". Any past-due annual dues, assessments, or other charges assessable hereunder shall bear interest at the maximum amount allowed by Alabama Law per annum commencing thirty (30) days after same become due and with attorneys' fees, and cost of collection. Until such time as the Association is created by the Declarant, the Declarant, acting on behalf of the Association to be formed, shall be entitled to carry out the responsibilities assigned to, and enjoy and exercise the rights and powers granted to, the Association pursuant to these restrictions

22. WAIVER OR AMENDMENT OF COVENANTS. It is expressly provided that the Declarant, its successors, or assigns, shall have the exclusive right for a period of ten (10) years from the date of recording of this Plat to amend any or all of the restrictions or covenants herein contained; provided that no such amendment shall be made without the written consent of LCR Tuscany, LLC. Such amendment shall be evidenced by the recording of a written amendment signed and recorded in the Office of the Recorder of Lee County and shall become effective upon such recording. This shall include the right to waive any part of the restrictions or conditions as to any particular lot. After ten (10) years from the date of recording of this Plat, these Restrictions and Limitations may be amended at any time by the recording of such amendment executed by the owners of the fee title of not less than seventy-five percent (75%) of the lot Owners.

23. ASSESSMENTS FOR TIVOLI CLUSTER HOMES. In addition to the Annual Dues and Assessments, authorized in Paragraph 21 above, an Assessment for Tivoli Village, will be assessed against each Owner of a Cluster Home in Tivoli Village for the installation and preservation of the landscape of Tivoli Village.

23.1 LCR Tuscany, LLC, shall act as the “committee” to determine and assess such assessment for design, installation and preservation of said landscape, irrigation and maintenance of reciprocal use areas, including repair and replacement of exterior lights on the outside perimeter of the Cluster Homes, (this does not include Exterior Lighting located in the Courtyard of Each Cluster Home) at Tivoli Village. The assessment for such landscape installation, maintenance and repair at Tivoli Village shall be levied by the Homeowners Association, at the direction of the Committee, and the amount and due date of such assessment shall be determined by the Committee in its sole and absolute discretion, and be delivered in a Notice to such Cluster Home Owners in Tivoli Village. The assessment shall include reimbursement to LCR Tuscany, LLC, for any and all cost incurred by it in management and collection of said assessment.

23.2. The Homeowners Association shall maintain a separate account for funds paid as the Assessments for Tivoli Village such that said assessments are not commingled with any other assessment funds. Said account will be managed by the Committee.

23.3 In the event the Assessment for Tivoli Village is not paid when the same comes due, all provisions regarding the effect of such non-payment and remedies of the Association regarding the same as set forth in Paragraph 21 of this Declaration shall be applicable, with subjection of said lot to a lien as set forth in this Declaration. The committee shall send out the assessment bills and coordinate with the Homeowners Association, the remedies referred to above.

23.4 The initial monthly Assessment for a Cluster Home in Tivoli Village is One Hundred Forty and No/100 (\$140.00) per month. Such Assessment for the Tivoli Village is in addition to, and not in lieu of, any other assessment set forth in this Declaration.

23.5 All other provisions set forth in this Declaration shall remain in full force and effect as set forth herein and are directly applicable to each Cluster Home Owner in Tivoli Village.

23.6 LCR Tuscany, LLC has the right to terminate their participation on the committee at any time after the completion of the Cluster Homes in Tivoli Village. At such time, LCR Tuscany, LLC, shall give the Tivoli Homeowners’ Association ninety (90) days notice in writing of their intent to withdraw from the committee and the Homeowners Association shall become responsible for appointing members of the committee and managing the special assessments for Tivoli Village at the termination of the ninety (90) day notice period.

24. DURATION OF COVENANTS. These Covenants and Restrictions are to run with the land and shall be binding on all parties and persons claiming protection under them until January 1, 2022 at which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years.

25. SEVERABILITY OF COVENANTS. Invalidation of anyone of the covenants or restrictions by judgment of a court of competent jurisdiction shall in no way affect any of the other covenants or restrictions and all other provisions of these covenants and restrictions shall remain in full force and effect.

26. INDEMNIFICATION. Neither the Committee nor agent thereof nor the Declarant shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the foregoing provisions, nor for any structural or other defects in any work done according to such plans and specifications.

27. ENFORCEMENT OF COVENANTS. The right to enforce these provisions by by due process of Law, is hereby vested in each owner of a lot in this subdivision, and in the Homeowners Association, its successors and assigns. These covenants and restrictions may all be enforced by a civil action for damages and by any other appropriate remedy at law or in equity. If any person or persons shall violate or attempt to violate any of the covenants herein, it shall be lawful for any other person or persons vested with the title of any of the lots herein before described, the Homeowners Association, its successors and assigns, or the Declarant, to proceed either in law or in equity, against such person or persons violating or attempting to violate any such covenants, and to enjoin them from so doing, to recover damages for such violation and to seek all other appropriate relief. In the event that the Homeowners Association, or the Declarant should employ counsel to enforce any of the foregoing covenants and restrictions, all costs incurred in such enforcement, including reasonable attorneys' fees, shall be paid by the owner of such lot or lots against whom such enforcement action is brought. The Homeowners Association, or the Declarant, as the case may be, shall have a lien upon such lot or lots to secure owner's payment of all such costs, which lien may be enforced as provided by these restrictions and the laws of the State of Alabama.

28. EFFECTIVE DATE. These Restrictions and Covenants shall be deemed to be effective upon their recording in the Office of the Judge of Probate of Lee County, Alabama.

29. CAPTIONS AND GENDERS. The captions preceding the various paragraphs and subparagraphs of these Restrictions are for the convenience of reference only, and none of them shall be used as an aid to the construction of any provision of the Restrictions. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or the neuter.

LCR TUSCANY, L.L.C.

By: R. Jackson Burkhalter
Its: Member Manager

By: Leslie T. Letlow
Its: Member Manager

STATE OF ALABAMA
LEE COUNTY

I, the undersigned, a Notary Public in and for said County and State, hereby certify that R. Jackson Burkhalter whose name is signed to the foregoing instrument, as Member Manager of LCR Tuscany, LLC, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the ____ day of _____, 2012

(NOTARY SEAL)

Notary Public

MY COMMISSION EXPIRES: _____

STATE OF ALABAMA
LEE COUNTY

I, the undersigned, a Notary Public in and for said County and State, hereby certify that Leslie T. Letlow, whose name is signed to the foregoing instrument, as Member Manager of LCR Tuscany, LLC, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the ____ day of _____, 2012

(NOTARY SEAL)

Notary Public

MY COMMISSION EXPIRES: _____

AUBURDAN, INC.

By: Lee Danielly, Jr.
Its: Vice President

STATE OF ALABAMA
LEE COUNTY

I, the undersigned, a Notary Public in and for said County and State, hereby certify that Lee Danielly, Jr. whose name is signed to the foregoing instrument as Vice President of Auburdan, Inc. and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the _____ day of _____, 2012

(NOTARY SEAL)

Notary Public

MY COMMISSION EXPIRES: _____

DANIELLY, LLC

By: Lee Danielly, Jr.
Its: Managing Member

STATE OF ALABAMA
LEE COUNTY

I, the undersigned, a Notary Public in and for said County and State, hereby certify that Lee Danielly, Jr. whose name is signed to the foregoing instrument as Managing Member of Danielly, LLC and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the _____ day of _____, 2012

(NOTARY SEAL)

Notary Public

MY COMMISSION EXPIRES: _____

EXHIBIT A

TIVOLI PHASE 1A Building Restrictions & Architectural Guidelines

1. Building exteriors are to be brick, stone, stucco or comparable material.
 2. Building exteriors are to be in earth tones.
 3. Roof material should be architectural dimensional shingles in earth tones.
 4. Vent stacks and other roof penetrations must be on the rear slope of the home and not visible from the street.
 5. Any stucco siding to be accompanied by brick or stone skirt to a minimum of 24" around all four sides.
 6. At least one section of exterior such as extruded garage or entranceway should be of stone or brick to eave height so as not to stop at the corner and produce a pilaster effect at the corner.
 7. Windows should be of vinyl, wood or aluminum clad wood. No aluminum frame windows allowed.
 8. Front doors should be either wood or fiberglass and painted or stained. No metal front doors.
-
9. Landscaping should contain a minimum of four 10 gallon trees planted in front and side yards, and side yards should contain plantings of a minimum of 3 gallon size.
 10. Landscaping should contain some rolling mogul type slope to avoid an all flat lot.
 11. Garage doors should be carriage house decor styling.
 12. Fencing material should be painted wood, iron or aluminum.

EXHIBIT B

TIVOLE PHASE 1B Building Restrictions & Architectural Guidelines

1. Building exteriors are to be brick, stone, stucco or comparable material.
2. Building exteriors are to be in earth tones.
3. Roof material should be architectural dimensional shingles in earth tones.
4. Vent stacks and other roof penetrations must be on the rear slope of the home and not visible from the street.
5. Windows should be of vinyl, wood or aluminum clad wood. No aluminum frame windows allowed.
6. Front doors should be either wood or fiberglass and painted or stained. No metal front doors.
7. Landscaping should contain a minimum of four 10 gallon trees planted in front and side yards, and side yards should contain plantings of a minimum of 3 gallon size.
- 8. ~~Landscaping should contain some rolling mogul type slope to avoid an all flat lot.~~
9. Garage doors should be carriage house decor styling.
10. Fencing material should be painted wood, iron or aluminum.