



This instrument was prepared by:  
 Gregg S. Truxton, Esquire  
 Bolaños Truxton, PA  
 12800 University Drive, Suite 340  
 Fort Myers, Florida 33907

INSTR # 5740781  
 Official Records BK 03867 PG 1752  
 RECORDED 03/10/2003 01:49:37 PM  
 CHARLIE GREEN, CLERK OF COURT  
 LEE COUNTY  
 RECORDING FEE 42.00  
 DEPUTY CLERK S Jensen

**Restrictive Covenant**

This Restrictive Covenant (“Restrictive Covenant”) is made effective as of the 7<sup>th</sup> day of March, 2003 (the “Effective Date”), between **S.W. Florida Land One, L.L.C.**, a Florida limited liability company, whose address is 8660 College Parkway, Suite 160, Fort Myers, Florida 33919 (“SW”), and **Gladiolus Preserve, L.L.C.**, a Florida limited liability company, whose address is 11220 Metro Parkway, Suite 27, Fort Myers, FL 33912(“Gladiolus”).

WITNESSETH

Whereas, SW is the owner of those certain parcels of real property described on Exhibit “A” hereto and incorporated herein by reference (the “SW Parcels”); and

Whereas, Gladiolus is the owner of the real property which is described on Exhibit “B” hereto and incorporated herein by reference (the “Gladiolus Parcel”); and

Whereas, SW has agreed that the SW Parcels shall be subject to a restrictive covenant as set forth herein.

Now, Therefore, in consideration of the sum of Ten and No/100 Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Restrictive Covenant. The SW Parcels may be used for any of the uses allowed within the Commercial Planned Development (“CPD”) District, as set forth in Resolution Number Z-00-018A of the Board of County Commissioners of Lee County, Florida, an excerpt of which is attached as Exhibit “C” hereto; except that no portion of the SW Parcels shall be used for the following purposes:
  - Car wash establishments;
  - Mini-warehouse facilities.

Further, SW shall not file any application for re-zoning of the SW Parcels, or for any special uses or deviations from the approved zoning for the SW Parcels, without the prior written consent of Gladiolus.

2. Remedies: In the event of any violation of this Restrictive Covenant, Gladiolus shall be entitled to injunctive relief without the necessity of posting bond, in addition to any other remedies at law or in equity.
3. Term: This Restrictive Covenant shall automatically terminate 25 years from the date hereof.
4. Notices. All notices authorized or required herein shall be in writing and shall be considered delivered when sent by registered or certified mail, return receipt requested, to the following:

If to SW:	S.W. Florida Land One, L.L.C. 6150 Diamond Centre Court, #1300 Fort Myers, Florida 33912-4366 Attention: Janet E. Allison, Manager
-----------	---

If to Gladiolus:	Gladiolus Preserve, L.L.C. 11220 Metro Parkway, Suite 27 Fort Myers, Florida 33912 Attention: W. Michael Kerver
------------------	--

or to such other address as either party may from time to time designate by written notice to the other party.

5. Entire Agreement. This Restrictive Covenant constitutes the entire agreement by and between parties hereto with respect to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, both written and oral, by and between the parties hereto with respect to such subject matter. No representations, warranties or agreements have been made or, if made, have been relied upon by either party, except as specifically set forth herein. This Restrictive Covenant may not be amended or modified in any way except by a written instrument executed by each party hereto.
6. Binding Effect. All terms and provisions of this Restrictive Covenant shall be binding upon, inure for the benefit of and be enforceable by and against the parties hereto and their respective personal or other legal representatives, heirs, successors and assigns.
7. No Waivers. No waiver by either party shall be effective unless set forth in a written instrument signed by a duly authorized officer or representative of

the party to be charged with such waiver. Further, the waiver by either party of the prompt and complete performance, or breach or violation, of any provision of this Restrictive Covenant shall not operate as, nor be construed to be, a waiver of any subsequent breach or violation, and the waiver by either party of the exercise of any right or remedy that it may possess shall not operate as, nor be construed to be, the waiver of such right or remedy by any other party or parties or a bar to the exercise of such right or remedy by such party or parties upon the occurrence of any subsequent breach or violation.

8. Headings. The article headings in this Restrictive Covenant are for convenient reference only and shall not have the effect of modifying or amending the expressed terms and provisions of this Restrictive Covenant, nor shall they be used in connection with the interpretation hereof.
9. Pronouns; Gender. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the personal liability or obligation with respect to same.
10. Time. Time shall be of the essence. Any reference herein to time periods of less than six (6) days shall in the computation thereof exclude Saturdays, Sundays and legal holidays, and any time period provided for herein which shall end on a Saturday, Sunday or legal holiday shall extend to 5:00 p.m. of the next full business day.
11. Severability. The invalidity of any provision of this Restrictive Covenant shall not affect the enforceability of the remaining provisions of this Restrictive Covenant or any part hereof. In the event that any provision of this Restrictive Covenant shall be declared invalid by a court of competent jurisdiction, the parties agree that such provision shall be construed, to the extent possible, in a manner which would render the provision valid and enforceable or, if the provision cannot reasonably be construed in a manner which would render the provision valid and enforceable, then this Restrictive Covenant shall be construed as if such provision had not been inserted.
12. Governing Law. This Restrictive Covenant shall be governed by, and construed and interpreted in accordance with, the laws of the State of Florida without regard to principles of conflicts or choice of laws.
13. Jurisdiction and Venue. Each of the parties irrevocably and unconditionally: (i) agrees that any suit, action or legal proceeding arising out of or relating to this Restrictive Covenant shall be brought in the courts of record of the State of Florida in Lee County; (ii) consents to the jurisdiction of each such court in any suit, action or proceeding; and (iii) waives any objection which it may

have to the laying of venue of any such suit, action or proceeding in any of such courts.

- 14. Trial by Jury. The parties hereby waive any right they may have under any applicable law to a trial by jury with respect to any suit or legal action which may be commenced by or against the other concerning the interpretation, construction, validity, enforcement or performance of this Restrictive Covenant or any other agreement or instrument executed in connection with this Restrictive Covenant.
- 15. Attorney's Fees and Costs. In the event of any litigation arising under this Restrictive Covenant, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.

IN WITNESS WHEREOF, the undersigned have executed this Restrictive Covenant as of the day and year first above written.

Witnesses:

Grantor:

**SW Florida Land One, L.L.C.**  
a Florida limited liability company

Gail Ebert Lynn  
Print Name: GAIL EBERT LYNN

By: Janet E. Allison  
Janet E. Allison, Manager

Angela Wright  
Print Name: Angela Wright

Grantee:

**Gladiolus Preserve, L.L.C.**  
a Florida limited liability company

Gail Ebert Lynn  
Print Name: GAIL EBERT LYNN

By: W. Michael Kerver  
W. Michael Kerver,  
Vice President

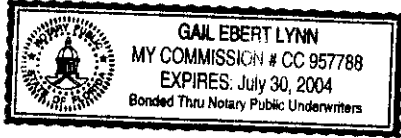
Angela Wright  
Print Name: Angela Wright

State of Florida )  
 ) ss  
County of Lee )

The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of March, 2003, by Janet E. Allison, as Manager of SW Florida Land One, L.L.C. She (✓) is personally known to me or ( ) has produced \_\_\_\_\_ as identification.

Gail Ebert Lynn  
Notary Public, State of Florida  
Print Name: GAIL EBERT LYNN

My commission expires: 7/30/04



State of Florida )  
 ) ss  
County of Lee )

The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of March, 2003, by W. Michael Kerver, as Vice President of Gladiolus Preserve, L.L.C. He/She (✓) is personally known to me or ( ) has produced \_\_\_\_\_ as identification.

Gail Ebert Lynn  
Notary Public, State of Florida  
Print Name: GAIL EBERT LYNN

My commission expires: 7/30/04



**EXHIBIT "A"**

**SW Parcels**

Tracts E and F, Gladiolus Preserve, according to the Plat thereof recorded in Plat Book 13, Pages 58-63, of the Public Records of Lee County, Florida.

**EXHIBIT "B"**

**Gladiolus Parcel**

All of Gladiolus Preserve, according to the Plat thereof recorded in Plat Book 73, Pages 58 - 63, of the Public Records of Lee County, less and except:

Tracts E and F, Gladiolus Preserve, according to the Plat thereof recorded in Plat Book 73, Pages 58 - 63, of the Public Records of Lee County, Florida, and less and except:

Lots 129, 130 and 131, Gladiolus Preserve, according to the Plat thereof recorded in Plat Book 73, Pages 58 - 63, of the Public Records of Lee County, Florida.

except as modified by the conditions and deviations below. This development must comply with all requirements of the Lee County LDC at time of local development order approval, except as may be granted by deviation as part of this planned development. If changes to the MCP are subsequently pursued, appropriate approvals will be necessary.

2. The following limits apply to the project and uses:

a. Schedule of Uses

Permitted uses within the CPD district:

- Administrative offices
- Assisted Living Facility
- ATM (Automatic Teller Machine)\*
- Auto parts store: No installation service\*
- Banks and financial establishments, Group I\* and Group II
- Boat parts store\*
- Business services, Group I
- ~~Car wash\*~~
- Clubs: Private\*
- Drug store, Pharmacy\*
- Day care center, adult, child\*
- Entrance gates and gatehouse, in compliance with LDC §34-1749
- Essential services
- Essential service facilities, Group I
- Fences, walls
- Gift and souvenir shop\*
- Hardware store\*
- Health care facility, Group III\*
- Hobby, toy, game shops\*
- Household and office furnishings - all groups
- Laundromat\*
- Laundry or dry cleaning Group I\*
- Library
- Medical office
- ~~Mini-warehouse~~
- Non-store retailers - all groups
- Paint, glass and wallpaper store\*
- Parking lot Accessory
- Personal services, Groups I & IV\* (excluding escort services, palm readers, fortunetellers, card readers, and tattoo parlors)
- Pet shop\*
- Pharmacy\*
- Place of worship
- Printing and publishing
- Religious facilities



- Rental or leasing establishments, Groups I & II\* (excluding passenger car pick up and drop off)
- Repair shops, Group I\*
- Restaurants, Groups I & II\*
- Signs, in accordance with LDC Chapter 30
- Specialty retail shop, Groups I & II\*
- Storage: Indoor only LDC §34-3001 *et seq.*
- Used merchandise stores, Group I\*
- Variety store\*
- Vehicle and Equipment Dealers, Group II\*

\* Permitted only within the northerly 300 feet of the CPD district.

**Permitted uses within the RPD district:**

**Dwelling Unit:**

- Single Family Detached
- Two Family Attached

Entrance Gate and Gatehouse, in compliance with LDC §34-1749

Essential Services

Essential Service Facilities, Group I

Excavation, water retention

Fences, walls

Home occupation, with no outside help

Parking lot, accessory only to private club or recreational facility

Recreation Facilities, Private on-site, Personal

Residential Accessory Uses

Signs, in compliance with LDC Chapter 30

b. Site Development Regulations

**MINIMUM LOT AREA AND DIMENSIONS:**

**CPD District**

Area:	15,000 square feet
Width:	75 feet
Depth:	200 feet

**RPD District**

**Single Family Detached**

Area:	6,000 square feet
Width:	50 feet
Depth:	100 feet