

EX 1981 13271

LOWNDES COUNTY
FILED IN OFFICE

1981 MAR 23

Return To:
Langdale, Vallotton et al
1007 N. Patterson Street
Valdosta, GA 31601
File No.: 01053/J

003422

01 MAR 23 PM 12:1

[Signature]
CLERK OF SUPERIOR COURT

[Space Above This Line For Recording Data]

DECLARATION OF COVENANTS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS AND RESTRICTIONS ("Covenant") is hereby made by CHERRY CREEK PROPERTIES, INC., a Georgia Corporation, with its principal office and place of business in the City of Valdosta, Lowndes County, Georgia, the undersigned owner/covenantor. Covenantor is owner in fee simple of a certain tract of real property in Lowndes County, Georgia. This tract of land is a portion of that property having been conveyed on November 29, 1994, from First State Bank and Trust Company of Valdosta, a Georgia Corporation, Not Individually but as Executor and Successor Trustee of the Annie Laurie Rose Trust set up in Item IX under the Last Will and Testament of Frank D. Rose, late of Lowndes County, Georgia, deceased, to Cherry Creek Properties, Inc., and recorded in Lowndes County, Georgia, in Deed Book 1153, at Page 030, in the Office of the Clerk of Superior Court, and is by reference incorporated herein for a description of all other legal purposes.

PREMISES

WHEREAS, Covenantor was issued a letter of concurrence with the Banking Instrument entitled, "Revised Final Banking Instrument, Cherry Creek Mitigation Bank, Lowndes County, Georgia, November, 2000". This banking instrument bears the file number 990010930 and is issued pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344) under the regulatory authority of the Department of the Army, Corps of Engineers, Savannah District ("Corps of Engineers"), setting forth authorization for certain dredge and/or discharge of fill activities in waters of the United States, including wetlands as set forth in the banking instrument; and,

WHEREAS, a portion of said banking instrument dated November, 2000, is attached hereto as Exhibit A, and by this reference, the entire banking instrument is made a part hereof; and,

WHEREAS, the Property is approved as a commercial wetland and/or streamside lands mitigation bank pursuant to the terms and conditions of the Cherry Creek Mitigation Bank, said document being incorporated by reference. The purpose of the bank is to generate credits to compensate for wetland impacts that have been determined unavoidable after consideration of avoidance and minimization on Section 404, Clean Water Act and Section 10 of the Rivers & Harbors Act of 1899 permit actions. Credits from the bank are sold in return for a fee agreed upon by the banker and the permittee where the Corps of Engineers has approved the use of banking credits as mitigation in whole or in part on permits issued. The owner/covenantor of the Property

placed in this Declaration of Covenants and Restrictions, in return for consideration from execution of the banking instrument, the receipt and sufficiency whereof being acknowledged, agrees to certain restoration, enhancement, and preservation of wetlands and/or streamside lands on the Property. The banking instrument sets forth the success criteria and determination of credit releases. At such time credits are sold from the bank, the Property is to remain subject to this declaration of covenants and restrictions in perpetuity.

WHEREAS, Exhibit B is a dated, platted survey with seal affixed by a Georgia registered surveyor identifying the wetlands, wetland buffers, uplands, and/or streamside lands ("Property") and is made a part hereto and by this reference is incorporated. The survey identifying the Property by bearings and distances and coordinate values has been recorded at Plat Cabinet A, Page 1571, of the deed records of the Clerk of Superior Court of Lowndes County, Georgia.

WHEREAS, the property consists of 530.24 acres in one tract of land; and,

WHEREAS, a legal description of the property is attached hereto and by reference is made a part hereto as Exhibit C; and,

WHEREAS, the Property is being preserved, restored, or enhanced as a wetland, buffer to wetlands, streamside lands, or upland buffer to waters of the United States pursuant to the banking instrument referenced above; and

WHEREAS, the environmental conservation functions and values are of importance to the people of the State of Georgia and the general public, and are worthy of preservation, restoration and enhancement. The functions and values are summarized and described in Exhibit D, attached hereto and made a part hereof.

NOW, THEREFORE, as consideration for the issuance of the referenced banking instrument, and as required mitigation for dredge and/or discharge of fill in waters of the United States including wetlands, Owner/Covenantor has promised to place certain restrictions on the Property exclusively for conservation purposes, in order that it shall remain substantially in its open, natural and scenic condition in perpetuity.

1.

The terms and conditions of this Declaration of Covenants and Restrictions shall be both implicitly and explicitly included in any subsequent transfer, conveyance, or encumbrance affecting all or any part of the restricted property. It shall set forth the terms and conditions of this document either by reference to this document and its recorded location or set forth in full text. It shall not be amended or extinguished except by written approval of the Corps of Engineers.

Except as necessary to carry out wetland restoration, enhance the natural habitat, or carry out other mitigation or maintenance approved by the Corps of Engineers, the actions encompassed as prohibited by this covenant shall include, but shall not be limited to the following:

- A. Clearing, cutting or mowing;
- B. Earthmoving, grading, removal of topsoil, cultivation, burning, filling or changes in the topography of the land in any manner;
- C. Placement of refuse, wastes, sewage, dredged spoil, solid waste, incinerator residue, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, industrial, municipal, or agricultural waste on the Property;
- D. Draining, ditching, diking, dredging, channelizing, pumping, impounding, excavating;
- E. Diverting or affecting the natural flow of surface or underground waters within, or out of the Property;
- F. Mining, drilling;
- G. Burning, systematically removing or cutting or otherwise destroying any vegetation, except for pruning, or removal of diseased or unsafe trees conducted in accordance with current scientifically based practices recommended by the U.S. Forest Service, the Georgia Forestry Commission, or other responsible agency;
- H. Spraying with biocides;
- I. Introducing exotic species on the Property or otherwise altering the natural state of the wetlands;
- J. Grazing of domesticated animals;
- K. Raising of any structure in the wetlands, streamside buffers or wetland buffers, whether temporary or permanent, except that minimal structures for the observation of wildlife and wetlands ecology may be constructed with the prior approval of the Savannah District Engineer;
- L. Display of billboards, signs, or advertisements on or over the Property, except for the posting of no trespassing signs, signs indicating the property is for sale, signs identifying the conservation values of the property or their protection, and/or signs identifying the owner of the property.

M. Notwithstanding the restrictions set forth in the above paragraphs A-L, Covenantor may perform the following activities without additional approval from the Savannah District U.S. Army Corps of Engineers:

1. Installation of wildlife nesting structures.
2. Access the property by foot.
3. Occasionally perform prescribed burning of the 200 foot wide upland buffers.
4. Allow members of the Cherry Creek North Subdivision homeowners association and their guests to:
 - a. Ride horses on existing dirt roads provided signs are placed at the entrances to the site limiting horseback riding to the existing roads.
 - b. Use of three and four wheeled recreational vehicles on existing dirt roads provided that (1) signs would be placed at the entrances limiting the speed to 25 mph or less; (2) that off road riding is expressly prohibited; and that (3) adult supervision would be provided for minors.
 - c. Camping on high ground areas within 150 feet of the river bank in areas that would not require mechanized clearing of vegetation prior to use. No structure other than tents would be installed or constructed.
 - d. Hunting and fishing.
 - e. Public shall not be allowed to use the property and therefore no paid admission would be allowed for use of the property.

All amendments or modifications to the permit must be approved by the Corps of Engineers, Savannah District, Regulatory Branch.

3.

Covenantor has shown the approximate location of a logging road on Exhibit B, more particularly referenced for use by the adjoining property owner to access their property for logging purposes. Owner/Covenantor retains the right to maintain or improve the road and bridge, provided that such improvements do not adversely impact the wetland hydrology, soils, or vegetation of the adjacent wetland restoration areas.

4.

Covenantor represents and warrants that, after reasonable investigation and to the best of its knowledge:

- A. No substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, or regulation, as hazardous, toxic, polluting, or otherwise contaminating to the water or soil, has been released, generated, treated, stored, used, disposed of, deposited, abandoned, or transported in, on, from, or across the Property;
- B. There are not now any underground storage tanks located on the Property, whether presently in service or closed, abandoned, or decommissioned;
- C. Covenantor and the Property are in compliance with all federal, state and local laws and there is no pending or threatened litigation in any way affecting, involving or relating to the Property.

5.

Covenantor, its personal representatives, heirs, executors, administrators, successors and assigns, shall retain all other customary rights of ownership, including but not limited to the exclusive possession of the property, and the right to transfer or assign interests or use in the property, and the right to use the property in any manner which would not defeat or diminish the intent of this Declaration of Covenants and Restrictions.

6.

It is expressly understood and agreed that this covenant does not grant or convey to members of the general public, any rights of ownership, interest in, or use of the protected property.

7.

The United States Department of the Army, Corps of Engineers, may enforce the provisions of this covenant pursuant to the Clean Water Act and/or the Rivers & Harbors Act of 1899 and implementing regulations. The Government may bring an action at law or in equity against any person/s or entity violating this covenant, and may seek injunctive relief to restrain any person from violating any covenant contained herein. However, no violation of this covenant shall result in a forfeiture or reversion of title. In an enforcement action under the Clean Water Act, the Corps of Engineers may be entitled to a complete restoration for any violation, as well as any other remedy available under law or equity.

8.

The Corps of Engineers, Savannah District shall at reasonable times and upon notice to the owner, have the right of ingress and egress to inspect the property and in order to monitor

compliance and enforce the terms and conditions of the permit and this Declaration of Covenants and Restrictions.

9.

This covenant shall be binding upon the Covenantor, its heirs, successors and assigns, and upon occupants or users of the protected property forever. This covenant shall not terminate upon some fixed amount of time, but shall run with the land both as to benefit and as to burden. This covenant is established as a conservation benefit to the general public for the purpose of preserving waters of the United States, including wetlands, wetland buffers, streamside lands, and adjacent uplands. Furthermore, this covenant carries out the statutory requirement of Section 404 of the Clean Water Act (33 U.S.C. §1344) and Section 10 of the Rivers & Harbors Act of 1899 (33 U.S.C. § 403) and stated policies which provide for no net loss of wetlands due to their valuable environmental and ecological benefits.

10.

Covenantor shall execute and record this instrument in timely fashion in the Office of the Clerk of Superior Court in the county in which this Property is located and provide the Corps of Engineers with a copy of the recorded restrictive covenant and exhibits.

IN WITNESS WHEREOF Covenantor has duly executed this covenant on this the 23 day of MARCH 2001.

CHERRY CREEK PROPERTIES, INC. (SEAL)

By: [Signature] V.P.

Attest: [Signature] Sec-Treas.

Sworn to and subscribed before me on this 23 day of MARCH 2001.

[Signature]

[Signature]
Notary Public

Notary Public, Lander County, Nevada
My Commission Expires Aug 4, 2001

