



Name/Address: Carl Herbert McGilton, 108709 W. Old Inland Empire Hwy, Prosser, WA,  
99350

Grantor: McGilton, Carl Herbert

Grantee(s): Public

Document title: Declaration of Covenants, Conditions and Restrictions for Cherry Lane  
Residential Development.

Legal Description: Lts 1&3, Short Plat No. 646; Lts 1&2, Short Plat No. 3229; Lts 1,2,and3,  
Short Plat No. 3257, Benton County, WA. That portion of the NW 1/4 of  
the NW 1/4 of Section 32, Township 9 North, Range 25, EWM, known as  
Government Lot 4, EXCEPT the West 330 feet AND EXCEPT right of  
way for canals and roads, Situated in the County of Benton, State of  
Washington.

Reference Number(s) of documents assigned or released:

Assessor's Property Tax Parcel/Account Numbers: 132952010646003, 132952010646001,  
132952013229001, 132952013229002, 132952013257001,  
132952013257002, 13295201325700<sup>3</sup>

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR CHERRY LANE RESIDENTIAL DEVELOPMENT**

Reference numbers of related documents: N/A

Declarant:

1. Carl Herbert McGilton

Legal Description:

1. Lts 1&3, Short Plat No. 646; Lts 1&2, Short Plat No. 3229; Lts 1,2,and3, Short Plat No. 3257, Benton County, WA

2. That portion of the NW 1/4 of the NW 1/4 of Section 32, Township 9 North, Range 25, EWM, known as Government Lot 4, EXCEPT the West 330 feet AND EXCEPT right of way for canals and roads.,

Situated in the County of Benton, State of Washington

TOGETHER with the appurtenances and water rights thereunto belonging.

SUBJECT to exceptions and reservations in former conveyances, and easements and rights of way over and across said premises for irrigation, drainage, and public utility purposes.

Assessor's Property Tax Parcel Account Numbers: 132952010646003, 132952010646001, 132952013229001, 132952013229002, 132952013257001, 132952013257002, 132952013257003

WHEREAS, Carl Herbert McGilton, the Declarant, is the owner of the following real property located in Benton County, Washington, and known as the "Cherry Lane Residential Development;"

Lots 1 and 3, Short Plat No. 646

Lots 1 and 2, Short Plat No. 3229

Lots 1, 2, and 3, Short Plat No. 3257

WHEREAS, Declarant wishes to place restrictions, covenants, and conditions upon said real property for the use and benefit of the Real Property, the Declarant, and the future Owners,

NOW, THEREFORE, the Declarant hereby declares that all the Real Property described above shall

be held, sold, and conveyed subject to the following restrictions, covenants and restrictions, all of which are for the purpose of enhancing the value, desirability, and attractiveness of the Real Property as a desirable residential development. These restrictions, covenants, conditions, and easements shall run with the land and shall be binding upon all parties having or acquiring any right, title, or interest in the Real Property, or any part thereof, and shall inure to the benefit of and be binding upon each successor in interest.

#### **I. ARCHITECTURAL REVIEW PROCESS**

**GENERAL PLAN:** The Owner(Developer) does hereby establish a general plan for the improvement and development of the land as described above as Cherry Lane Residential Development and does hereby establish covenants, conditions, reservations, and restrictions upon which and subject to which all lots and portions thereof shall be improved, sold, conveyed and used. It is the intent and purpose to ensure that the development of all lots shall be in the form of small acreage with high quality family residences where future owners and their families may pursue small scale, part-time agricultural and animal husbandry activities such as riding horses, 4-H and FFA projects, livestock maintenance, or orchard, vineyard, and garden cultivation appropriate to lot size. It is the further intent and purpose of these restrictions and covenants to ensure the high quality of dwellings and structures now and in the future to protect the health, safety, welfare, and security of monetary investments and to further all things conducive to harmony and compatibility among neighbors.

**ARCHITECTURAL REVIEW COMMITTEE:** Prior to commencing any construction upon a lot, the Owner shall first obtain approval for anticipated construction work from the Architectural Review Committee. Carl Herbert McGilton, 108709 W. Old Inland Empire Hwy., Prosser, WA 99350, Linda E. Heaton, P.O. Box 2217, Pateros, WA 98846, and Dennis L. Pleasant, 11701 N. Pioneer, Prosser, WA 99350 shall constitute the committee until such time as Carl Herbert McGilton is no longer the Owner of any residential lot in the subdivision. Carl Herbert McGilton may appoint substitutes or successors for either Linda E. Heaton or Dennis L. Pleasant, and in the event of the death or incapacity of Carl Herbert McGilton, his authorized representative or personal representative in probate shall designate the membership of the Architectural Review Committee.

Prior to construction upon the premises, the Owner shall submit architectural drawings, construction specifications, and a lot plan for approval by the Architectural Review Committee. The architectural drawings, construction specifications, and lot plan shall meet the specifications and requirements of the Architectural Review Committee, to include location of the residence and additional structures on the premises in relation to topography and boundaries.

Upon completion of the Owner's submission of requested and required documents, drawings, plans,

and information to the Architectural Review Committee, the Architectural Review Committee shall either approve the planned development of the premises or reject the development. In the event of a rejection of the Owner's development plans, the Architectural Review Committee shall provide a written critique, together with suggestions or proposal for changes in the plans which will meet the review committee's requirements.

The Architectural Review Committee, or its designated representative, will oversee compliance with the construction plans and with these covenants, conditions, and restrictions pending the completion of work. The lot Owner must comply with the plans, drawings, and documents submitted to the Architectural Review Committee and any departure or nonconformity in the construction, layout, configuration of improvements, or design of the construction project is declared to be a violation of the covenants, restrictions, and conditions under this Declaration.

**TERMINATION OF ARCHITECTURAL REVIEW FUNCTION:** At any time hereafter, and in the sole discretion of Carl Herbert McGilton, may terminate the Architectural Review Committee and discharge the requirement for an architectural review of construction plans. Notice of termination of the architectural review requirement shall be given to all lot Owners in writing.

**DISPUTES BETWEEN OWNER AND ARCHITECTURAL REVIEW COMMITTEE:** In the event of a dispute between the lot Owner and the Architectural Review Committee, and prior to any court proceeding, the lot Owner shall first retain the services of a licensed professional architect to act as the lot Owner's representative at the sole expense of the lot Owner. The architect representative for the lot Owner shall:

1. Familiarize himself with the overall development and the design standards established by the Architectural Review Committee.
2. The architect representative shall prepare, for submission to the Architectural Review Committee, plans, specifications, and projected "as built" drawings or renditions of the lot Owner's project in order to adequately depict and present the finished project for the Committee.
3. The architect representative shall then provide written notice to the Architectural Review Committee of a proposed resolution of a dispute, and the committee shall, within thirty (30) days of such notice, meet with the lot Owner's architectural representative to resolve the dispute and cooperate with the process of establishing mutually acceptable development plans for construction of improvements and configuration thereof on the property.
4. In the event the lot Owner's architectural representative and the Architectural Review

Committee are unable to reach an agreement, then in that event the dispute resolution provisions, set forth below, shall apply.

**WAIVER AND RELEASE OF CLAIMS:** Each person acquiring title to a lot in the Cherry Lane Residential Development, as a condition to acquisition of such lot, does release and discharge the Architectural Review Committee collectively, and each member thereof, from any claim or cause of action for damages of any kind or nature based upon the good faith performance of the review committee's function as outlined herein.

## **II. GENERAL COVENANTS, CONDITIONS, AND RESTRICTIONS**

Each lot shall be subject to the following general covenants, conditions, and restrictions:

1. **View Protection.** No structure shall be constructed on a lot which deprives any other lot in the subdivision of a Yakima River view. The Architectural Review Committee will ensure that initial landscaping plans of a lot will not obscure Yakima River Views of other lots in the subdivision.
2. **Single Family Residences Only.** Only one single family residence shall be constructed on each lot. Multi-family residences or multiple residences on one lot are prohibited.
3. **Quality of Construction.** No structures shall be erected, altered, placed, or permitted to remain on any lot other than one single family dwelling; a private, completely enclosed garage for not more than four cars; and such other outbuildings as are incidental to the residential use of the property. The ground floor area of the residence, exclusive of open porches and garages, shall not be less than 1800 square feet for a one-story dwelling. A multiple level residence shall have a minimum of 2200 square feet total, with ground floor minimum of 1300 square feet, exclusive of open porches and garages. Exteriors shall be brick, stucco, or drivet side wall shingles, board and batten, channel rustic, tongue and groove, lap siding, or similar good quality siding. Single wall construction is not permitted for residences. Roofing materials shall be 30 year architectural shingles or better, cement or ceramic tile, metal roofing or similar good quality roofing. Exterior colors shall be earth tones, which complement the natural landscape.
4. **Mobile Homes and Manufactured Homes Prohibited.** No mobile homes or manufactured homes are permitted in the subdivision.
5. **Duration of Construction.** No construction activity shall exceed one year in duration from start to finish.
6. **Outbuildings.** All outbuildings shall be roofed, sided, and painted within one year from the start of construction. All outbuildings shall conform in appearance to the quality of work required of all residences and structures. Outbuildings must harmonize with the style of the residence. An outbuilding used as a shop may be a metal structure, but it must conform with all provisions of Section II of this document.

7. Landscaping. The grounds and areas surrounding each structure shall be attractively landscaped. Landscaping shall be completed within one year of the date the County issues a certificate of occupancy. All landscaping plans shall be developed in consideration of the views and vistas of adjoining lots.

8. Irrigation System. Each lot is afforded irrigation water from the Sunnyside Valley Irrigation District. . Each lot shares a main supply line with at least one other lot. The Owners of each lot shall be responsible for the irrigation system within their lot and shall have a shared responsibility for maintenance of the applicable shared main supply line. Irrigation systems shall be maintained and operated so as to avoid damage or flooding to adjoining properties.

9. Noxious Weeds/Unlawful Plant Life. Lots will be kept and maintained free of noxious weeds and unlawful plant life. Lots shall be irrigated and maintained as pasture, orchard, or an appropriate cultivated condition.

10. Subdividing. No lot shall ever be subdivided, re-subdivided, or re-platted.

11. Limitation on Business Use. No commercial activity and no trade or business of any kind may be conducted in or from any improvement or lot except that a Resident or Owner residing in an improvement on a lot may conduct business activity from or within the improvement or lot only if:

- a) the existence or operation of the business activity within the improvement or lot is not apparent or detectable by sight, sound, or smell from anywhere in the development outside of the improvement or lot;
- b) the business activity conforms to all zoning and other governmental requirements for the lot and/or the activity;
- c) the business activity does not involve members of the public generally visiting the property to conduct business on the premises;
- d) the business activity does not constitute a nuisance, annoyance, or hazardous or offensive use of the premises.
- e) A lot may be farmed with cultivated crops for commercial purposes, appropriate to lot size and in conformance to all provisions of these covenants. In that regard, these Covenants, Conditions, and Restrictions shall control activities on the property and supersede RCW 7.48.300 et seq., provided, however that existing farm activities, including the operation of a wind machine, orchard sprayers for the application of chemicals, and existing agricultural operations are protected and exempt from the definition of nuisance.

12. Maintenance by Owners. Each Owner shall at all times, at his or her sole expense, maintain, repair, reconstruct, and replace his or her home and residential site, and all landscaping and improvements thereon,

and keep the same in good, sound, clean, neat, trim, and sanitary order, appearance, condition, and repair, in a manner consistent with the overall quality of the neighborhood.

13. Trash. No garbage, refuse, waste, rubbish, or debris of any kind shall be dumped, placed, deposited, kept, or permitted to accumulate in any portion of the development except in appropriate sanitary steel containers and locations. Yard waste, such as rocks, lawn, and shrubbery clippings, dirt and other material resulting from landscaping or construction work by Owners or their agents shall not be thrown, dumped, or allowed to accumulate on any lot or dumped into the common roadway, ditches, or upon neighboring properties. The removal and disposal of all such materials shall be the sole responsibility of each lot Owner.

14. Garbage Containers, , Storage Tanks, Etc.. All equipment and containers for the storage or disposal of garbage, trash, or other waste shall at all times be kept in a clean and sanitary condition . Further, all receptacles and areas for deposit, storage, or collection of garbage, trash, or other waste shall be substantially screened so as not to be visible from views from roads and adjoining properties. All above ground storage tanks, mechanical equipment and other similar apparatus on lots shall be located or screened so as to be concealed from view.

15. Fences. Fences shall be constructed in a manner that does not create a nuisance, eyesore, or safety hazard to people or animals. Fences must be constructed from good quality, standard fencing materials such as vinyl, wood slats, woven wire, or chain link. Barbed wire, hog wire, and similar fence material is prohibited. No fences shall be constructed from scrap materials such as pallets, tin roofing, tires, etc. Animal enclosures must be of sufficient height and strength to retain animals.. No fences or enclosures may be constructed from chicken wire.

16. Prohibition on Portable or Relocated Structures. No dwelling, barn, shed, or shelter of any kind erected at another location shall be moved to a lot in the subdivision.

17. Prohibited Residential Uses. No basement, tent, shack, barn, garages, or other outbuilding erected or placed on the property at any time can be used as a residence.

18. Temporary Construction Office. Notwithstanding any other provision prohibiting the same, a lot Owner may permit the use of a self-contained trailer as a temporary construction office or living quarters for up to one year, but only during construction of the residential structure on the premises.

19. Livestock. Lot Owners may conduct limited, non-commercial livestock and poultry operations, in accordance with the regulations of Benton County, pertaining to control, care, and husbandry of animals and pets. All farm animals must be kept in a fully enclosed area.. A maximum of one horse or one cow per pasture acre or three sheep or goats per pasture acre may be maintained on the premises. Pigs, except for 4-H or FFA projects, are prohibited on the premises. The maintenance of any animal on the premises shall be conducted in such a manner as to minimize offensiveness or nuisance to neighbors, particularly with regard to shelter, confinement, noise, and disposal of waste.

20. Dogs, Cats, Etc.. Dogs, cats, and other common household pets are permitted on the premises, provided they are properly cared for and not maintained for commercial purposes. Pets shall be confined to the lot and not allowed to roam at large. Dogs of problem or aggressive breeds are prohibited, including Staffordshire bull terriers (pit bulls), Presa Canario, and Rottweilers. Any dog which engages in incessant barking shall be deemed a nuisance animal and such nuisance animals are prohibited.

21. Manure. Manure must be managed for fly and odor control, on a regular schedule, in one of the following manners:

- Placement in a fly-proof container with periodic removal from the lot
- Adequate burying of manure or incorporating material into soil
- Removal of manure from the lot, with disposal away from the property

22. Vehicles and Parking. The following restrictions shall be applicable to the parking and storage of vehicles and other mobile equipment. For the purpose of this section, the term "vehicle" includes both passenger vehicles and recreational vehicles and wheeled equipment of any description whatsoever. The term "passenger vehicle" includes automobiles, vans, sport utility vehicles, trucks, and motorcycles. The term "recreational vehicle" includes, without limitation, campers, motor homes, all terrain vehicles, snow mobiles, boats and other water craft, boat trailers, house trailers, other trailers (either with or without wheels), tractors and other recreational vehicles.

a) With the exception of vehicles temporarily parked on the subdivision roadway, because of ice, snow, or construction related activities on a lot, no vehicles of any type shall be parked overnight on any of the commonly used subdivision roadways.

b) Commercial vehicles, tractors, construction or agricultural equipment, or other special duty equipment shall not be parked on the premises in a manner which is visible to other lots.

c) Recreational vehicles may be parked on the premises in view of other lots temporarily, but the permanent location of a recreational vehicle on the premises requires that it be screened or covered.

d) No vehicle hulks, vehicles in disrepair, or vehicles undergoing repair shall be maintained on the premises of any lot unless housed inside a garage or outbuilding that meets the standards herein contained.

23. Signs. Signs for all purposes shall be limited to four square feet.

24. Lighting. No spot lights, flood lights, mercury vapor lights, or high illumination lights shall be placed or utilized upon any lot or structure which in any manner will allow light to be unreasonably directed or reflected upon any other lot.

25. Nuisance Prohibited. No noxious or offensive activity shall be carried in or on any home, improvement or lot or in the common area, nor shall anything be done therein or thereon which may be or become an unreasonable annoyance, embarrassment, discomfort, or nuisance to other Owners or Residents, or

render any portion of the properties unsanitary, unsightly, offensive, or detrimental to persons using or occupying any portion of the properties. No Owner or Resident shall make any unreasonably disturbing noises or odors audible or noticeable outside of a home or an improvement, nor permit or suffer his or her family, servants, employees, agents, visitors, or licensees to make such unreasonably disturbing noises or odors. No Owner or Resident shall do or permit anything to be done within his or her home, improvements, or lot that will unreasonably interfere with the rights, comforts, or convenience of any other Owner or Resident. No off road vehicle tracks or courses allowed..

### III. ROAD MAINTENANCE

1. Road Maintenance Association and Manager. Declarant declares and creates an unincorporated association of Owners for road maintenance. The unincorporated association shall consist of four (4) members, each of whom is the Owner of a lot in the subdivision (Lot 1, Short Plot 646, Lots 1, 2, 3, Short Plot 3257) and gains access to their lot by the private development roadway. Carl Herbert McGilton is designated the Manager of the Association and shall continue to serve in that capacity unless he is unable to serve, resigns, or is no longer an Owner of a lot in the subdivision. In the event of the incapacity or death of Carl Herbert McGilton, while Carl Herbert McGilton continues to hold an ownership in a lot or lots in the subdivision, his designated representative or personal representative in probate may designate a successor manager by written notice to all lot Owners. In the event of the resignation of Carl Herbert McGilton, without the designation of a successor manager, such resignation shall be communicated to all lot Owners, in writing, with a designated date and time for the election of a successor road maintenance manager. At such meeting, the majority of Owners in attendance shall elect a successor manager.

2. Manager's Duties. The Manager shall have the duty to collect an annual road maintenance assessment from the membership. The Manager may assess up to, but not more than \$250 per lot annually for road maintenance purposes. In the event the Manager deems it necessary to assess more than \$250, the Manager shall first notify all Owners of a meeting for the purpose of increasing road maintenance assessments. Such meeting shall be held at a location within the subdivision and notice of the meeting shall be given not less than ten (10) days nor more than thirty (30) days prior to the date of the meeting.

The attendance of three lot Owners at the meeting shall constitute a quorum. Approval of the assessment shall be by a majority present at the meeting. Appearance at the meeting may be personal or by proxy.

3. Road Maintenance Assessments and Liens. Road maintenance assessments shall be paid within thirty (30) days of the date the Manager gives written notice of the annual assessment. In the event the assessment

is not paid within thirty (30) days of the initial billing, then the Manager shall provide a second notice titled "Notice of Default in Payment of Road Assessment" which shall include the following information:

- a) the amount of the assessment
- b) the date the assessment was billed to the lot Owner
- c) that in the event the assessment is not paid within thirty (30) days of the date of the Notice

of Default, then the Manager will record an assessment lien against the Owner's property

Thirty (30) days after the Notice of Default, the Manager may record a Notice of Lien for Assessment in substantially the following form:

Notice of Lien for Assessment of Road Maintenance	
Declarant: (name of manager)	
Lot Owner Subject to Lien: (name of delinquent homeowner)	
Legal Description: (short legal description)	
Parcel No. _____	
TO: (Name of lot Owner with lot Owner's address)	
Notice is hereby given that the undersigned, Manager of the Cherry Lane Residential Development Road Maintenance Association, hereby declares a lien in favor of the Association in the amount of \$ _____ for the delinquent road maintenance assessment of _____ (year of assessment) in the amount of \$ _____. The assessment includes lien fees, interest, and any attorney's fees and costs incurred by the Association in the collection thereof. The assessment includes:	
Principal Amount of Assessment	\$ _____
Lien Fee	\$150
TOTAL	\$ _____
Interest accrues on the unpaid assessment from the date of recording at the annual rate of 12 percent (12%). This lien may be foreclosed consistent with the provisions of the Declaration of Covenants, Conditions, and Restrictions of the Cherry Lane Residential Development	



#### IV. ENFORCEMENT AND REMEDIES / DISPUTE RESOLUTION

1. Standing. The Declarant, the Declarant's successor, personal representative or designated representative, any lot Owner or combination of lot Owners may enforce these covenants, conditions, or restrictions. The Manager of the Road Maintenance Association is specifically granted the authority to enforce assessments.

2. Dispute Resolution. Prior to the initiation of any suit in a Court of Law, the aggrieved party shall first provide notice of such dispute to the lot Owner in breach of these covenants, conditions, and restrictions, in writing, and such notice shall demand arbitration consistent with this paragraph. All lot Owners agree to binding arbitration of disputes at a location to be mutually agreed upon in Benton County, Washington. In the event the parties are unable to agree upon an arbitrator or location, the same shall be selected by a neutral judge for the Benton County Superior Court in an action solely based on the establishment of an arbitrator and arbitration location. The Mandatory Arbitration Rules, as implemented in Benton County Superior Court, shall define and be binding as to procedures for arbitration. The prevailing party in an arbitrated dispute shall be entitled to recover reasonable attorney's fees and costs.

3. Injunctive Relief. Upon a final determination of the dispute by an arbitrator, the prevailing party may certify such arbitration result to the Benton County Superior Court for the purpose of obtaining injunctive relief. Upon certification of an arbitration decision which establishes a clear violation of these covenants, conditions, and restrictions, the prevailing party may obtain an injunctive relief without the necessity of bond. The Court shall also award a reasonable attorney's fee and costs to the party obtaining injunctive relief.

