



PLANNING COMMISSION MEETING AGENDA  
SPECIAL MEETING  
TUESDAY OCTOBER 1, 2019  
**6:00 PM Regular Meeting**

1. Call to Order
2. Roll Call
3. **(CONTINUED FROM AUGUST 20 AND SEPTEMBER 17, 2019 MEETINGS)**  
**PUBLIC HEARING:** Anita Volkenant (Applicant/Owner) requests that the City consider the following actions for the property located at 5835 Drake Drive, Independence, MN (PID No. 26-118-24-43-0006):
  - a. An amendment to the existing interim use permit previously granted on the property.
4. Adjourn.

City of Independence

*Request for an Amendment to the Interim Use Permit for the  
Property located at 5835 Drake Drive*

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*To:* Planning Commission  
*From:* Mark Kaltsas, City Planner  
*Meeting Date:* September 17, 2019  
*Applicant:* Anita Volkenant  
*Owner:* Anita Volkenant  
*Location:* 5835 Drake Drive

***Request:***

Anita Volkenant (Applicant/Owner) requests that the City consider the following actions for the property located at 5835 Drake Drive, Independence, MN (PID No. 26-118-24-43-0006):

- a. An amendment to the interim use permit allowing horticulture use of the subject property.

***Property/Site Information:***

The property is located at 5835 Drake Drive which is on the south side of Drake Drive between County Road 83 and County Road 90. There is an existing home located on the property along with 5 detached permanent accessory structures and 2 detached temporary hoop houses. The property has the additional following characteristics.

Property Information: 5835 Drake Drive  
Zoning: *Rural Residential*  
Comprehensive Plan: *Rural Residential*  
Acreage: 3.8 acres

5835 Drake Drive: Aerial View



**Discussion:**

The City granted an interim use permit (IUP) in April of 2019 to allow the continued use of horticulture on the subject property. The IUP was approved subject to a settlement and stipulation agreement which further detailed the conditions of the IUP approval. One of the conditions related to the two hoop houses located on the property. The agreement included the following provisions relating to the hoop houses on the property:

*There are currently two temporary hoop houses situated on the Property (the "Hoop Houses"). Volkenant and PVG agree that the Hoop Houses will be utilized for Horticultural Purposes, and the City consents to the continued use of the Hoop Houses on the Property for Horticultural Purposes. Volkenant and the City further agree as follows:*

- (i) Volkenant shall be allowed to maintain the temporary plastic covering on the 30X1 00 Hoop House year-round.*
- (ii) Between November 1 and December 1 of each calendar year, Volkenant shall be allowed to install the temporary plastic covering*

*on the 20X80 Hoop House that is currently situated on the Property;*

*(iii) Between July 1 and July 30 of each calendar year, Volkenant shall remove the temporary plastic covering from the 20X80 Hoop House that is currently situated on the Property; and*

*(iv) Volkenant shall not install any additional temporary hoop house structures on the Property without prior City review and approval.*

The current agreement requires the applicant to remove the temporary plastic covering from the 20 x 80 hoop house between the dates of July 1 and July 30. The applicant is now asking the City to consider allowing the temporary plastic covering to remain on the 20 X 80 hoop house year-round.

There are several key considerations relating to the proposed amendment to the interim use permit that should be noted and further considered by the City.

1. The City regulates the total square footage of detached accessory structures on a property. The subject property would allow for a total of 3,306 SF (165,315 SF x 2%). The applicant currently has the following detached accessory structures on the property totaling 3,457 SF:
  - a. Garage: 600 SF
  - b. Garage #1: 270 SF
  - c. Garage #2: 420 SF
  - d. Barn & Lean-to: 881 SF
  - e. Shed: 736 SF
  - f. Lean-to: 550 SF

In addition, the applicant has the following hoop houses totaling 4,600 SF:

- a. Hoop House #1: 3,000 SF (300' x 100')
- b. Hoop House #2: 1,600 SF (20' x 80')

The total square footage of detached accessory structures on the property is 8,057 SF. This total is more than twice the allowable square footage of 3,306 SF.

The square footage of detached accessory structure exceeds the allowable amount permitted on the property. All of the permanent detached buildings are existing and considered legal-non-conforming. The two hoop houses (greenhouses) on the property were constructed in the last 5 years without approval from the City. The applicant noted that they believe the structures to be temporary and considered agricultural buildings which would not require a building permit. The City does not differentiate between temporary and permanent structures in the zoning ordinance and the hoop houses are considered permanent accessory structures.

The City will need to find that it should permit more than double the allowable square footage on the property and the buildings are adequately mitigated so as to not take away from the reasonable use and enjoyment of the surrounding properties.

The City has criteria relating to interim use permits. One of the criteria of an interim use permit is that it meets the standards for granting a conditional use permit. The following criteria have been established for both an interim use permit and conditional use permit:

1. *The use is deemed temporary and the use conforms to the development and performance standards of the zoning regulations.*
2. *The date or event that will terminate the use can be identified with certainty.*
3. *Allowing the use will not impose additional costs on the public if it is necessary for the public to take the property in the future.*
4. *The user agrees to any conditions that the city council deems appropriate for allowing the use.*
5. *The use meets the standards set forth in subsection 520.11 governing conditional use permits.*

The criteria for granting a conditional use permit are clearly delineated in the City's Zoning Ordinance (Section 520.11 subd. 1, a-i) as follows:

1. *The conditional use will not adversely affect the health, safety, morals and general welfare of occupants of surrounding lands.*
2. *The proposed use will not have a detrimental effect on the use and enjoyment of other property in the immediate vicinity for the proposes already permitted or on the normal and orderly development and improvement of surrounding vacant property for uses predominant in the area.*
3. *Existing roads and proposed access roads will be adequate to accommodate anticipated traffic.*
4. *Sufficient off-street parking and loading space will be provided to serve the proposed use.*
5. *The proposed conditional use can be adequately serviced by public utilities or on-site sewage treatment, and sufficient area of suitable soils for on-site sewage treatment is available to protect the city form pollution hazards.*
6. *The proposal includes adequate provision for protection of natural drainage systems, natural topography, tree growth, water courses, wetlands, historic sites and similar ecological and environmental features.*
7. *The proposal includes adequate measures to prevent or control offensive odor, fumes, dust, noise, or vibration so that none of these will constitute a nuisance.*
8. *The proposed condition use is consistent with the comprehensive plan of the City of Independence.*
9. *The proposed use will not stimulate growth incompatible with prevailing density standards.*

The City will need to determine if the requested interim use permit amendment meets all of the aforementioned conditions and restrictions. Along with the initial IUP approval, the applicant did prepare a site plan which proposed screening of the property from Drake Drive. A copy of the site plan is attached to this report.

***Neighbor Comments:***

The City has not received any written comments prior to the time of this writing.

***Recommendation:***

Staff is seeking a recommendation from the Planning Commission pertaining to the request for an amendment to the interim use permit with the following findings and conditions:

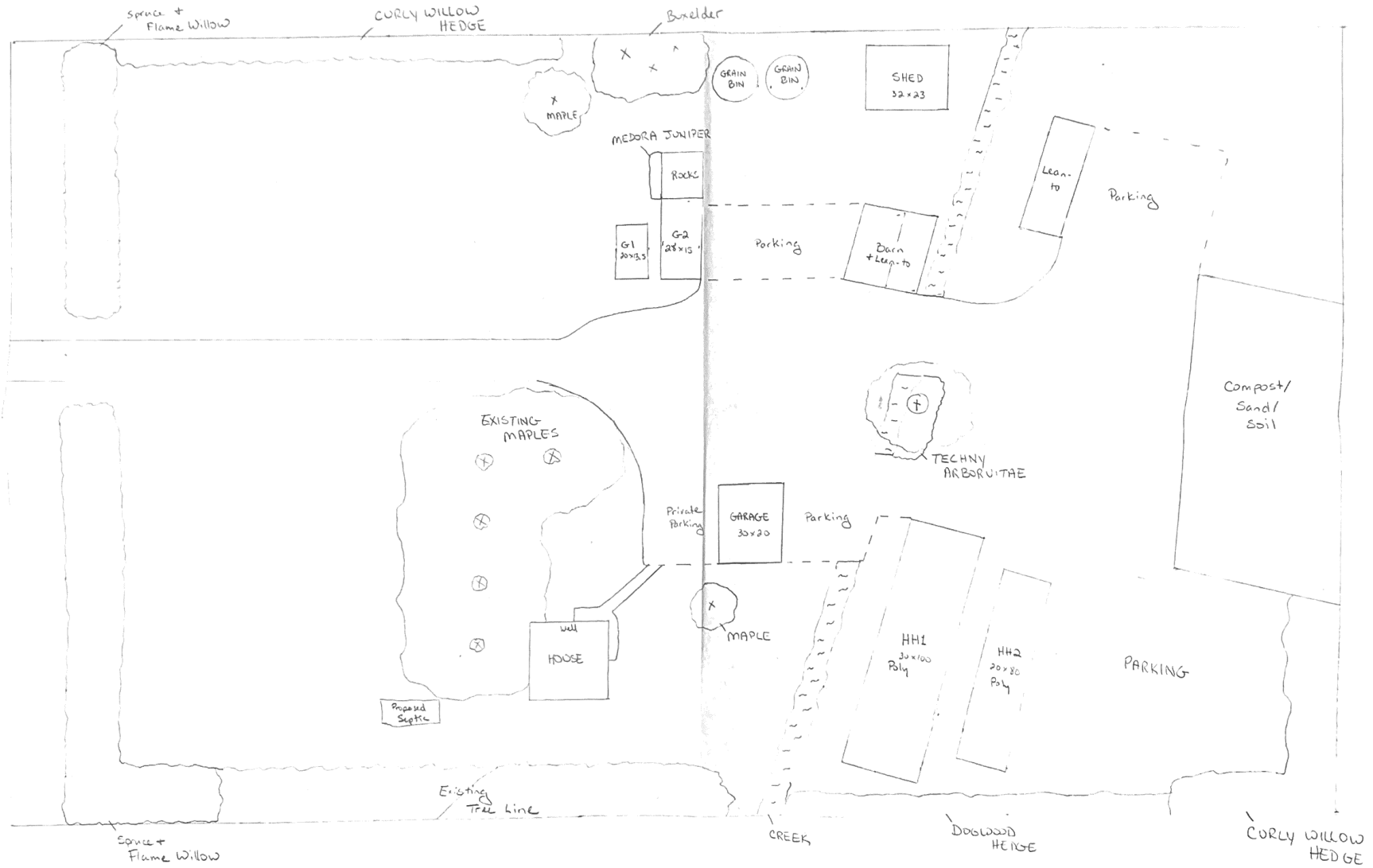
1. The proposed interim use permit request meets all applicable conditions and restrictions stated in Chapter V, Section 510, Zoning, in the City of Independence Zoning Ordinance.
2. The horticulture use of the property shall be subject to all conditions provided for and further detailed in the attached **Exhibit A** (Settlement and Stipulation Agreement) with the following amendment:
  - a. Volkenant shall be allowed to maintain the temporary plastic covering on the 30X1 00 Hoop House year-round.
  - b. Volkenant shall be allowed to maintain the temporary plastic covering on the 20 X 80 Hoop House year-round.
  - ~~b. Between November 1 and December 1 of each calendar year, Volkenant shall be allowed to install the temporary plastic covering on the 20X80 Hoop House that is currently situated on the Property;~~
  - ~~c. Between July 1 and July 30 of each calendar year, Volkenant shall remove the temporary plastic covering from the 20X80 Hoop House that is currently situated on the Property; and~~
3. The applicant shall pay for all costs associated with the City's review and processing of the requested amendment to the interim use permit.

***Attachments:*** Application  
Site Plan  
Exhibit A - Settlement and Stipulation Agreement

← N

5835 DRAKE DR  
MAPLE PLAIN MO 65359

1/4" = 5.5'



DRAKE DR

## SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT (the "Agreement") is made this 30<sup>th</sup> day of November, 2018, by and between: (i) and Anita M. Volkenant ("Volkenant"); (ii) the City of Independence (the "City"); and (iii) with respect to Paragraph 5 below only, Robert Volkenant (the "1030 Property Owner"). Volkenant, the City and the 1030 Property Owner, were applicable, shall be referred to individually as a "Party" and collectively as the "Parties."

### RECITALS

WHEREAS, Volkenant resides at 5835 Drake Drive, Independence, Minnesota 55359 (the "Property"); and

WHEREAS, Volkenant is the owner of Pleasant View Gardens, Inc. ("PVG"), a seasonal horticultural based business; and

WHEREAS, Since 2015, Volkenant and PVG have continuously utilized the Property for purposes including horticultural purposes: The growing or production of fruits, vegetables, flowers, cultured sod and nursery stock, including ornamental plants and trees for the production of income ("Horticultural Purposes") as defined by Section 510.05, Subd. 42 of the applicable City Code (the "Code"); and

WHEREAS, Volkenant and PVG have made improvements to the Property in order to facilitate PVG's Horticultural Purposes including the erection of two (2) hoop house structures on the Property; and

WHEREAS, for several years, a dispute has existed between Volkenant, PVG and the City regarding Volkenant's past and present continuing use of the Property in connection with the seasonal operations of PVG, and the improvements to the Property; and

WHEREAS, as a result of recent settlement discussions, and in an effort to avoid costly and time consuming litigation, the Parties have agreed to fully and completely settle, compromise and resolve all claims, and potential claims, that the City has, or may have, against Volkenant relating in any way to Volkenant's past, present and future use of the Property, and Volkenant and PVG's improvements to the Property, in accordance with, and subject to, the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the foregoing recitals, the terms and conditions set forth below, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby stipulate and agree as follows:

### AGREEMENTS

1. Incorporation of Recitals: The Recitals set forth above are incorporated herein by reference and become part of this Agreement.



2. Effective Date: This Agreement shall be effective and binding upon the Parties upon final approval this Agreement by the City Council and the issuance of the agreed upon Interim Use Permit more fully described below (the "Effective Date").

3. Volkenant's Allowed Use of the Property: Without limiting Volkenant's personal use and enjoyment of the Property, Volkenant shall be allowed, for so long as she and her family members and heirs own the Property, to continue to use the Property in furtherance and continuation of PVG's horticultural based business and activities subject to receipt of an IUP pursuant to paragraph 4.

4. Interim Use Permit/Reservation of Rights: Upon execution of this Agreement, Volkenant and, as appropriate, PVG, shall promptly apply for an Interim Use Permit ("IUP") to be processed by the City in the normal course. Such IUP application shall propose or request terms consistent with those attached hereto as Exhibit A. The final terms of the IUP shall be established by the City Council. The IUP shall provide that it shall remain effective for so long as Volkenant and/or her family members and/or heirs own, possess and/or reside at the Property and may not be revoked so long as Volkenant and/or her family members and/or heirs own, possess and/or reside at the Property. In the event the IUP is denied or is not granted with terms which, in Volkenant's sole determination, are consistent with those attached hereto as Exhibit A, Volkenant may revoke this Agreement by giving written notice to the City within seven (7) days of the City Council's issuance of such IUP.

5. Additional Parking: The 1030 Property Owner is the fee owner of the 1030 Property. In furtherance of this Agreement and issuance of the IUP, the 1030 Property Owner hereby agrees to allow Volkenant and PVG to park PVG employee vehicles on the 1030 Property. The City hereby consents to the forgoing and agrees that Volkenant and PVG shall be allowed to park PVG employee vehicles on the 1030 Property without limiting, impairing, modifying, negating or otherwise invalidating the current Conditional Use Permit that is of public record and runs with the 1030 Property (the "CUP").

6. Existing Agricultural Buildings: The City acknowledges and acknowledges and agrees that with the exception of the permanent shed located closest to the home on the Property that was constructed in the 1970's, Volkenant claims that all of the other permanent agricultural buildings situated on the Property were constructed on the Property during the 1950's and the City possesses no contrary information. Because all of the permanent agricultural buildings were constructed and in agricultural use prior to the enactment of the current applicable City ordinance, said permanent agricultural buildings and the continued existence and use thereof, shall be allowed as non-conforming pursuant to City ordinance Sections 510.05, Subd. 83 and 515.07.

7. City's Release of Volkenant: The City hereby releases Volkenant and PVG, and their respective agents, employees, successors, assigns, heirs, estates and other representatives from any and all rights, remedies, claims, demands, causes of action, liability, liens, loss, damage, cost and expense which the City has, or claims to have, known or unknown, asserted or unasserted, arising in any manner from or relating to matters that are the subject of this

Agreement occurring prior to the Effective Date of this Agreement provided that an IUP is issued and this Agreement is not revoked by Volkenant in accordance with paragraph 4.

8. Agreement Contingent upon City Council Final Approval: The Parties understand and agree that this Agreement is expressly contingent upon, and subject to, final City Council approval. In the event that final City Council approval is not obtained, this Agreement shall be null and void and of no force or effect.

9. Attorneys' Fees, Costs and Expenses: The Parties hereby waive any claim against one another for attorneys' fees, costs, and expenses, it being the intent of the Parties that each Party shall bear its own attorneys' fees, costs and expenses.

10. Entire Agreement and Waiver: This Agreement contains the entire agreement of the Parties, and the terms of this Agreement are contractual and not mere recitals. The provisions of this Agreement may only be waived, modified, or amended by the written agreement of all Parties hereto.

11. Legal Counsel: The Parties to this Agreement hereby warrant and represent that they have consulted with, and received advice from, legal counsel of their choice with respect to this Agreement, and/or have had the opportunity to consult with legal counsel of their choice prior to executing this Agreement. Without limiting the generality of the foregoing, the Parties acknowledge that they have legal and business options available to them other than the execution and delivery of this Agreement, but have nevertheless decided to execute and deliver this Agreement, and have done so voluntarily and without duress.

12. Authority To Enter Into This Agreement: The undersigned hereby represent and warrant that they are of legal age and are under no legal or other disability to prevent them from executing this Agreement and have full and complete authority to execute this Agreement on behalf of the Parties hereto.

13. Severability: If any part of this Agreement shall be determined to be void and unenforceable, the remainder of this Agreement shall remain in full force and effect.

14. Duty to Cooperate: The Parties acknowledge and agree that each of them will execute any other documents reasonably necessary, and otherwise cooperate with one another, in the future performance of this Agreement, in order to effectuate the intent of this Agreement, and in connection with obtaining final City Council approval of this Agreement.

15. No Admission of Liability: The Parties agree and acknowledge that this settlement is a compromise of disputed claims and that each Party expressly denies any and all liability in response to the claims asserted by the other or any violation of any law, contractual obligation or other agreement existing between the Parties.

16. Governing Law: This Agreement shall be governed by, and construed in accordance with, the laws of the State of Minnesota. Any action to enforce the terms of this Agreement shall be brought in a court situated in the State of Minnesota.

17. Counterparts: This Agreement may be executed in one or more counterparts, including facsimile or electronic counterparts, each of which shall be deemed an original, and together which shall constitute one and the same document and shall be deemed effective for all purposes as though this Agreement was executed as a "blue ink" original.

IN THE WITNESS WHEREOF, the Parties hereto have executed this Agreement effective as of the date and year set forth below.

Dated: \_\_\_\_\_, 2018

CITY OF INDEPENDENCE

By: \_\_\_\_\_

Its: \_\_\_\_\_

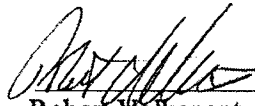
By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: 12-6, 2018

  
\_\_\_\_\_  
Anita M. Volkenant

Dated: 12-6, 2018

  
\_\_\_\_\_  
Robert Volkenant, as to Paragraph 5 above only

16491306v1

## EXHIBIT A

- a. Consistent with applicable City Codes, PVG, Volkenant, her family members and heirs shall be allowed to continue to utilize the Property for Horticultural Purposes and related activities.
- b. In connection with Volkenant's and PVG's approved continuing use of the Property for Horticultural Purposes, Volkenant agrees not expand the current size of any of the existing permanent agricultural buildings that are currently situated on the Property without first complying with applicable City building code and ordinance procedures and requirements. Consistent with the requirements of applicable City building codes and ordinances, the City agrees that it will not unreasonably deny conforming requests by Volkenant.
- c. There are currently two temporary hoop houses situated on the Property (the "Hoop Houses"). Volkenant and PVG agree that the Hoop Houses will only be utilized for Horticultural Purposes, and the City consents to the continued use of the Hoop Houses on the Property for Horticultural Purposes. Volkenant and the City further agree as follows:
  - (i) Volkenant shall be allowed to maintain the temporary plastic covering on the 30X100 Hoop House year-round.
  - (ii) Between November 1 and December 1 of each calendar year, Volkenant shall be allowed to install the temporary plastic covering on the 20X80 Hoop House that is currently situated on the Property;
  - (iii) Between July 1 and July 30 of each calendar year, Volkenant shall remove the temporary plastic covering from the 20X80 Hoop House that is currently situated on the Property; and
  - (iv) Volkenant shall not install any additional temporary hoop house structures on the Property without prior City review and approval consistent with applicable City Codes and Ordinances.
- d. Between March and November of each calendar year, Volkenant shall be allowed to have PVG employees present on the Property in furtherance of PVG's horticultural related business activities. Primarily, the PVG employees will be present on the Property for the purpose of maintaining, protecting and watering the horticultural materials that are seasonally grown and maintained on the Property for the purpose of sale and the generation of income. Each of the foregoing PVG employees shall be allowed to park their personal vehicles on the Property while present at the Property. Excluding all of Volkenant's personal vehicles and vehicles owned by PVG, no more than six (6) PVG employee owned vehicles shall be parked on the Property at any one time. Volkenant agrees to make reasonable efforts to screen said vehicles from view from the public

roadway. The City further agrees that all other PVG employee vehicles shall be allowed to park, and will be parked, at the 1030 County Road 83 Independence, Minnesota property (the "1030 Property").

- e. Volkenant shall be entitled and allowed to park all vehicles and trailers that she or PVG own on the Property. When parked or not in use, Volkenant will make reasonable efforts to screen said vehicles and trailers from view from the public roadway.
- f. Volkenant shall be entitled and allowed to store materials (i.e. compost, dirt and mulch) on the Property at the general locations depicted on the schematic attached hereto. Volkenant further agrees to make reasonable efforts to add additional screening to further screen said materials from view from the public roadway.
- g. Volkenant agrees to add additional reasonable screening in the general areas of the Property as depicted in the schematic attached hereto.
- h. Volkenant shall be entitled and allowed to continue to maintain the pile of rock that is currently situated on the Property for personal use.
- i. The bobcat located at the Property and owned by Volkenant shall be stored in one of the permanent out-buildings situated on the Property when not in use.
- j. Notwithstanding the foregoing, nothing in this Agreement shall be construed to limit Volkenant's rights to her continued lawful and personal use, enjoyment, maintenance and upkeep of the Property and the permanent buildings situated on the Property without undue interference.
- k. All of the permanent agricultural buildings and the continued existence and use thereof that were constructed and in agricultural use prior to the enactment of the current applicable City ordinance, shall be allowed as non-conforming pursuant to City ordinance Sections 510.05, Subd. 83 and 515.07.