



12R-182

Introduce: 8-6-12

RESOLUTION NO. A- 86974

1 BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

2 That the agreement titled Agreement Regarding the Annexation of Sky Ranch Acres,

3 which is attached hereto, marked as Attachment "A" and made a part hereof by reference, between

4 Sky Ranch Acres Neighborhood Association and the City of Lincoln, Nebraska, outlining certain

5 conditions and understandings relating to the annexation of approximately 30.11 acres of property

6 generally located at North 108th Street and Holdrege Street, is approved.

7 BE IT FURTHER RESOLVED that the Mayor is authorized to execute the Agreement

8 Regarding the Annexation of Sky Ranch Acres on behalf of the City.

9 *8/23* BE IT FURTHER RESOLVED that the City Clerk is directed to return one fully executed

10 copy of this Agreement to Rick Peo, Chief Assistant City Attorney, for distribution to the Owner.

11 BE IT FURTHER RESOLVED that the City Clerk is directed to record the Agreement

12 Regarding the Annexation of Sky Ranch Acres with the Register of Deeds, filing fees to be paid by

13 the Owner.

14 BE IT FURTHER RESOLVED that the City Clerk is directed to forward a copy of this

15 Agreement to Michaela Dugan, Impact Fee Administrator.

See further Council Proceedings on next page.

Introduced by:
Eugene Carroll

Approved as to Form and Legality:
Carl Cooper
City Attorney

AYES: Camp, Carroll, Emery,
Eskridge, Hornung, Schimek;
NAYS: None; ABSENT: Cook.

ADOPTED
AUG 20 2012
BY CITY COUNCIL

Approved this 23rd day of Aug., 2012:
Chris Brown
Mayor

12R-182

8/20/12 Council Proceedings:

CARROLL Moved to Amend Bill No. 12R-182 by accepting Attachment "A" attached hereto to replace Attachment "A" previously provided with Bill No. 12R-182.

Seconded by Schimek & carried by the following vote: AYES: Camp, Carroll, Emery, Eskridge, Hornung, Schimek; NAYS: None; ABSENT: Cook.

12R-182

MOTION TO AMEND NO. 1

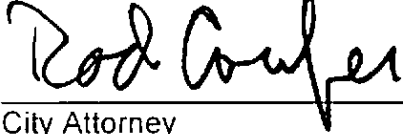
I hereby move to amend Bill No. 12R-182 by accepting Attachment "A" attached hereto to replace Attachment "A" previously provided with Bill No. 12R-182.

ADOPTED

AUG 20 2012

BY CITY COUNCIL

Approved as to Form and Legality:



City Attorney

Introduced by:



AYES: Camp; Carroll, Emery,
Eskridge, Hornung, Schimek;
NAYS: None; ABSENT: Cook.

Requested by: Law Department

Reason for Request: To clarify that the Neighborhood Association agreement not to protest the creating of a water district is only with regard to the property owned by the Association and does not prohibit individual property owners who are members of the Association from protesting the creation of a water district.

**AGREEMENT REGARDING THE ANNEXATION
OF SKY RANCH ACRES**

THIS AGREEMENT is made and entered into as of this 13 day of August 2012, by and between the **CITY OF LINCOLN, NEBRASKA**, a municipal corporation (the "City"), and **SKY RANCH ACRES NEIGHBORHOOD ASSOCIATION**, a Nebraska non-profit corporation (the "Association").

RECITALS

A. The City is presently considering Association's request that the City annex Sky Ranch Acres Addition and Sky Ranch Acres 1st Addition, more particularly described and shown on Exhibit A attached hereto, hereinafter collectively referred to as "Sky Ranch Acres."

Annexation is being requested as the private sanitary sewer system serving Sky Ranch Acres is failing. The City has inspected the private sanitary sewer mains and upon annexation is willing to accept ownership of and incorporate them into the City's public sanitary sewer system.

B. The parties are agreeable to annexation of Sky Ranch Acres provided there is an agreement regarding cost responsibilities for municipal services associated with annexation, maintenance responsibilities, and other appropriate matters relating to the annexation.

C. Sky Ranch Acres is located within the Southeast Rural Fire Protection District. *Neb. Rev. Stat.* §35-514, dealing with the City's annexation of territory from rural fire protection districts, provides in part that: "(7) Areas duly incorporated within the boundaries of a municipality shall be automatically annexed from the boundaries of the district notwithstanding the provisions of §31-766 and shall not be subject to further tax levy or other charges by the district, except that before the annexation is complete, the municipality shall assume and pay that

portion of all outstanding obligations of the district which would otherwise constitute an obligation of the area annexed or incorporated.” The City is willing to annex Sky Ranch Acres as requested by Association provided Association agrees to pay all costs needed for the City to assume and pay that portion of all outstanding obligations of the district which would otherwise constitute an obligation of the Property being annexed.

NOW, THEREFORE, in consideration of the mutual covenants herein, the parties agree as follows:

1. Annexation by City. The City shall annex Sky Ranch Acres on the terms and conditions set forth in this Agreement.

2. Sanitary Sewer.

(a) Private Sanitary Sewer System. The Association, at its own cost and expense, shall abandon the existing private wastewater treatment plant serving Sky Ranch Acres.

(b) Connection to Public Sanitary Sewer System. The City shall identify the improvements that are needed to extend the City’s sanitary sewer system to Sky Ranch Acres. Association shall, at its own cost and expense, construct all new public sewer mains (including connections to the existing mains) needed to serve Sky Ranch Acres, including the cost for acquisition of temporary and permanent easements, and payment of construction engineering fees. The new sanitary sewer mains will be built through the City’s executive order construction process and not by a special assessment district.

(c) Transfer of Ownership. Upon abandonment of the private wastewater treatment plant and upon completion of the new public sewer mains, the Association shall convey the private internal sewer mains throughout Sky Ranch Acres to the City and the City

agrees to accept ownership of said private internal sewer mains and incorporate them into the City's public wastewater system.

(d) Sanitary Sewer Easement. The Association shall, at no cost to the City, obtain and convey or grant to the City a 30-foot wide permanent sanitary sewer easement along the existing and proposed sanitary sewer route lying outside of the public right-of-way in order for the City to maintain, repair, replace or reconstruct the existing sewer mains and the new mains located on Sky Ranch Acres. The easement shall be conveyed or granted to the City within six months of annexation. In the event the easement is not timely conveyed to the City, the City shall have the right to acquire said easement by voluntary purchase or by condemnation if necessary and Association agrees to reimburse the City for the cost of acquisition. Such payment shall be made to the City within thirty (30) days following receipt of an invoice from the City requesting payment.

(e) Payment of Wastewater Impact Fees. Association, on behalf of each owner of a dwelling unit located upon Sky Ranch Acres, shall pay the required wastewater impact fee prior to connection of such dwelling unit to the City's public sanitary sewer system. Since there is no public water provided to Sky Ranch Acres, the Association shall, until such time as an individual water meter is installed in the dwelling unit, pay the City wastewater fees and service charges pursuant to a method of calculation for wastewater impact fees and sewer billings to be agreed upon between the parties prior to annexation. At such time as a water meter is installed in the dwelling unit, the City will bill the individual owner for the owner's usage.

3. Public Water System. Association understands and acknowledges that Sky Ranch Acres is not presently served by the City's public water system. In order to provide water

service the 16-inch water main in Holdrege Street will need to be extended from the intersection of 98th Street and Holdrege to the intersection of Cessna Lane and Holdrege Street and 6-inch water mains will need to be constructed within the public streets within Sky Ranch Acres. The Association understands and acknowledges that the costs to design and construct such water main in Holdrege Street is not shown in the City's current Capital Improvement Plan.

Association further understands that Association and/or individual property owners will be responsible at its/their own cost and expense to construct the 6-inch public mains needed within the public streets of Sky Ranch Acres to serve the lots being annexed with water service and fire protection. Notwithstanding the lack of public water, Association desires that Sky Ranch Acres be immediately annexed into the City of Lincoln. Therefore, as an inducement for the City to enter into this Agreement, Association agrees that Association shall not request the City to provide Association with public water in Holdrege Street earlier than contemplated in the City of Lincoln/Lancaster County Comprehensive Plan, as the same may be amended. However, after the public water main in Holdrege Street is extended from 98th Street to Cessna Lane, Association, as the owner of Outlots A and B, Sky Ranch Acres 1st Addition, agrees not to object to the creation of a water district to construct the six-inch public mains needed within Sky Ranch Acres to serve the lots being annexed with water service and fire protection if such a district is proposed.

4. Public Streets.

(a) The public streets in Sky Ranch Acres presently exist as paved rural cross section streets without sidewalks and lighting. These streets shall be allowed to remain as is, provided that after annexation the Association, on behalf of the abutting property owner, shall

have the responsibility to mow and keep open ditches and driveway culverts free of obstructions. This responsibility shall extend to and include that portion of the public right-of-way from the edge of pavement to the abutting property line.

(b) The Association agrees to indemnify and hold harmless the City for any damage to the lawns or sprinkler systems in the public right-of-way caused by the City during its street maintenance responsibilities such as snow removal.

(c) Association agrees not to object to the creation of a paving or repaving district in the future if the local streets require repaving. If the Association is the owner of abutting property, Association agrees to petition for construction of the paving or repaving. Association agrees to use its best efforts to obtain a similar agreement not to object and petition from all abutting property owners within Sky Ranch Acres.

(d) Association shall insure that there is pedestrian and public access to the future school in Waterford Estates. If necessary, Association, at no cost to the City, will grant or convey to the City a public access easement over the fifteen-foot resident pathway easement located in Sky Ranch Acres Addition and Outlots A and B, Sky Ranch Acres 1st Addition. Association further agrees to convey at no cost to the City the additional right-of-way width for Holdrege Street as determined by the City.

5. Contribution for Rural Fire District. Association understands and acknowledges that the City may not annex Sky Ranch Acres lying within the boundaries of the Southeast Rural Fire District except by the City assuming and paying that portion of all outstanding obligations of the District which would otherwise constitute an obligation of Sky Ranch Acres being annexed. The parties anticipate that the amount will be zero. However, in

the event said amount is in excess of zero dollars, the Association agrees to pay whatever amount which must be paid to Southeast Rural Fire District in order for the annexation to be complete.

6. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, personal representatives, successors and assigns and shall inure to and run with Sky Ranch Acres.

7. Amendments. This Agreement may only be amended or modified in writing signed by the parties to this Agreement.

8. Further Assurances. Each party will use its best and reasonable efforts to successfully carry out and complete each task, covenant, and obligation as stated herein. Each of the parties shall cooperate in good faith with the other and shall do any and all acts and execute, acknowledge, and deliver any and all documents so requested in order to satisfy the conditions set forth herein and carry out the intent and purposes of this Agreement.

9. Governing Law. All aspects of this Agreement shall be governed by the laws of the State of Nebraska. The invalidity of any portion of this Agreement shall not invalidate the remaining provisions.

10. Interpretations. Any uncertainty or ambiguity existing herein shall not be interpreted against either party because such party prepared any portion of this Agreement, but shall be interpreted according to the application of rules of interpretation of contracts generally.

11. Construction. Whenever used herein, including acknowledgments, the singular shall be construed to include the plural, the plural the singular, and the use of any gender shall be construed to include and be applicable to all genders as the context shall warrant.

12. Relationship of Parties. Neither the method of computation of funding or any other provisions contained in this Agreement or any acts of any party shall be deemed or construed by the City, Association, or by any third person to create the relationship of partnership or of joint venture or of any association between the parties other than the contractual relationship stated in this Agreement.

13. Assignment. In the case of the assignment of this Agreement by any of the parties, prompt written notice shall be given to the other parties who shall at the time of such notice be furnished with a duplicate of such assignment by such assignor. Any such assignment shall not terminate the liability of the assignor to perform its obligations hereunder, unless a specific release in writing is given and signed by the other parties to this Agreement.

14. Default. Association and City agree that the annexation promotes the public health, safety, and welfare so long as Association fulfills all of the conditions and responsibilities set forth in this Agreement. In the event Association defaults in fulfilling any of its covenants and responsibilities as set forth in this Agreement, the City may take such remedies, legal or equitable, which the City may have to enforce this Agreement or to obtain damages for its breach.

15. Recordation. This Agreement or a memorandum thereof shall be filed in the Office of the Register of Deeds of Lancaster County, Nebraska at Association's cost and expense.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date and year first above written.

CITY OF LINCOLN, NEBRASKA
a municipal corporation

By: [Signature]
Chris Beutler, Mayor of Lincoln

**SKY RANCH ACRES HOMEOWNER
ASSOCIATION, a Nebraska non-profit
corporation**

By: [Signature]
Title: President

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 23rd day of August, 2012, by Chris Beutler, Mayor of the City of Lincoln, Nebraska, a municipal corporation.



[Signature]
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 13 day of August, 2012, by Ronald Wilhelm, president of Sky Ranch Acres Homeowners Association, a Nebraska non-profit corporation, on behalf of the corporation.



[Signature]
Notary Public

EXHIBIT A
TO
AGREEMENT REGARDING THE ANNEXATION
OF SKY RANCH ACRES

Lots 1-14, Sky Ranch Acres Addition, and Lots 1-16 and Outlot A
and B, Sky Ranch Acres 1st Addition, located in the Northeast
Quarter of Section 24, Township 10 North, Range 7 East,
Lancaster County, Nebraska.