

APR 20 2009

ORDINANCE NO. 2716


City Clerk

AN ORDINANCE TO AUTHORIZE AN "AMENDED AND REINSTATED ASSIGNMENT OF RIGHTS TO RECOUPMENT PAYMENTS" UNDER AND PURSUANT TO A SANITARY SEWER RECOUPMENT AGREEMENT BETWEEN THE CITY OF COLUMBIA, ILLINOIS AND STS CUSTOM HOMES, INC., AN ILLINOIS CORPORATION, DATED JANUARY 20, 2003, WITH REGARD TO THE SANITARY SEWER OF THE CITY LOCATED ALONG THE EAST SIDE OF ILLINOIS ROUTE 3 BETWEEN SOUTH MAIN STREET AND THE COUNTRY CROSSING SUBDIVISION ON GILMORE LAKES ROAD WHICH WAS EXTENDED TO THE WEST SIDE OF ILLINOIS ROUTE 3 TO CONNECT TO THE CITY'S GALL ROAD SANITARY SEWER

WHEREAS, on January 20, 2003, the City of Columbia, Illinois (the "City") made and entered into a "Recoupment Agreement for Southern Columbia, Illinois Public Sanitary Sewer Constructed By STS Custom Homes, Inc.", which agreement was for a term of thirty (30) years and which agreement remains and is in full force and effect and has not been changed or amended and which agreement was authorized and approved by City of Columbia Ordinance No. 2128, enacted the 20th day of January, 2003;

WHEREAS, said agreement provides and allows that STS Custom Homes, Inc., an Illinois corporation, is entitled to receive a return of capital expenditures and interest earned on the same for a portion of the sanitary sewer line constructed and installed off the premises of the Country Crossing Subdivision in the City which sanitary sewer line was dedicated to and is now owned by the City in order for said developer to recapture some of that expense when and if it benefits and is used by other developers;

WHEREAS, said agreement further provides and allows that the agreement shall not be assignable by either party to the agreement without the prior written consent of the other party and that neither party will unreasonably withhold such consent;

WHEREAS, STS Custom Homes, Inc. has agreed to grant and convey to the First National Bank of Waterloo, an assignment of its rights and benefits under said agreement as collateral security to secure any and all indebtedness of STS Custom Homes, Inc. to said bank currently existing or hereinafter incurred;

WHEREAS, the City is agreeable to consenting to said assignment and enacts this Ordinance to authorize and approve of the assignment and to evidence the City's consent thereto.

NOW, THEREFORE BE IT ORDAINED, by the City Council of the City of Columbia, Illinois, as follows:

Section 1. The recitals contained above in the preamble of this Ordinance are hereby incorporated herein by reference as findings of the City Council of the City of Columbia, Illinois.

Section 2. The City of Columbia, Illinois hereby consents to the assignment of the rights and benefits due STS Custom Homes, Inc. under the above-mentioned Recoupment Agreement to First National Bank of Waterloo.

Section 3. The City Council of the City does hereby approve of the form of said assignment attached hereto and entitled:

“AMENDED AND RESTATED ASSIGNMENT OF RIGHTS TO
RECOUPMENT PAYMENTS”

and; the Mayor is hereby authorized and directed to consent to the assignment on behalf of the City by execution of the assignment in the space provided for his signature, in as many counterparts as the Mayor shall determine, and the City Clerk is hereby authorized and directed to attest the same and to affix thereto the corporate seal of the City.

Section 4. This Ordinance shall be in full force and effect from and after its passage, as provided by law.

Alderman Ebersohl moved the adoption of the above and foregoing Ordinance; the motion was seconded by Alderman Row, and the roll call vote was as follows:

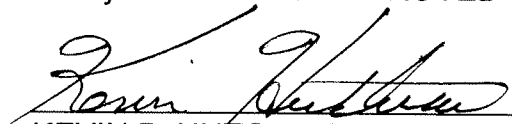
YEAS: Aldermen Ebersohl, Agne, Niemietz, Unnerstall, Row, Hejna, Oberkfell, Stumpf
and Mayor Hutchinson.

NAYS: None.

ABSENT: None.

ABSTENTIONS: None.

PASSED by the Columbia, Illinois City Council and APPROVED by the Mayor this 20th day of April, 2009.



KEVIN B. HUTCHINSON, Mayor

ATTEST:


WESLEY J. HOEFFKEN, City Clerk

(SEAL)

AMENDED AND RESTATED
ASSIGNMENT OF RIGHTS TO RECOUPMENT PAYMENTS

THIS AMENDED AND RESTATED ASSIGNMENT OF RIGHTS TO RECOUPMENT PAYMENTS is executed and accepted as of April 3rd, 2009, by STS CUSTOM HOMES, INC. as "Assignor" and FIRST NATIONAL BANK OF WATERLOO as "Assignee."

WHEREAS, Assignor has entered into an Agreement with the City of Columbia, Illinois captioned "Recoupment Agreement for Southern Columbia, Illinois Public Sanitary Sewer Constructed by STS Custom Homes, Inc." and dated January 20, 2003; and

WHEREAS, said Recoupment Agreement provides for Assignor's rights to certain payments of principal and interest as more fully described and referred to therein as recoupment fees, pursuant to the fee schedule attached as "Exhibit B" to said Recoupment Agreement;

WHEREAS, Assignor has heretofore executed and delivered to Assignee a purported "Assignment of Rights to Recoupment Payments" dated as of September 7, 2001; and

WHEREAS, the parties hereto now desire to amend and restate the aforesaid "Assignment of Rights to Recoupment Payments," as set forth herein.

Assignor hereby assigns, sets over and transfers unto FIRST NATIONAL BANK OF WATERLOO, as Assignee, as collateral to secure any and all indebtedness of Assignor to Assignee, whether previously incurred or incurred subsequent to this Assignment, all of Assignor's right, title and interest in and to the Payments as described and defined in the said Recoupment Agreement for City of Columbia, Illinois Sanitary Sewer.

The parties hereto acknowledge that the effectiveness of this Assignment is subject to the prior written consent of the City of Columbia, Illinois (which consent shall not be unreasonably withheld.) Assignor agrees to take such action or actions as may be reasonably required in order to obtain the consent of the City of Columbia, Illinois.

Subject to the aforesaid requirement of consent by the City of Columbia, Illinois, Assignor represents and warrants that it has full legal capacity to assign the rights and property interests hereby assigned and that Assignor's rights, title and interest in and to the Payments are subject to no legal defenses, liens or encumbrances of any kind.

Assignor authorizes Assignee to file a UCC financing statement to perfect Assignee's security interest, and hereby appoints Assignee as Assignor's attorney in fact to execute any documents in this regard. Assignor further authorizes Assignee to notify the City of Columbia, Illinois of Assignee's enforcement of this Assignment at such time and in such manner as Assignee may deem appropriate.

Assignor covenants and agrees to defend and protect Assignee's title and rights in and to the Payments herein assigned.

The persons executing this Assignment on behalf of Assignor covenant and warrant that they have full legal authority to do so by reason of appropriate action of the Officers of Assignor in accordance with Illinois law.

IN WITNESS WHEREOF, Assignor and Assignee have caused this Agreement to be executed by their proper officers duly authorized to do so by duly enacted resolutions of Assignor's Officers and by authority of the Board of Directors of First National Bank of Waterloo as of the day and year first above written.

ASSIGNOR:
STS CUSTOM HOMES, INC.

By: William B. Thompson
William B. Thompson, President

By: Keith J. Sanders
Keith J. Sanders, Secretary

ACCEPTANCE:

The foregoing Assignment is hereby accepted by FIRST NATIONAL BANK OF WATERLOO, a national banking corporation, as Assignee.

ASSIGNEE:
FIRST NATIONAL BANK OF WATERLOO,
a national banking corporation

By: W. Hey Hoodman
W. Hey Hoodman, President

CONSENT:

The foregoing Assignment is hereby consented to by the City of Columbia, Illinois.

Date _____

By: _____,
_____, Mayor

Attest: _____
_____, City Clerk