

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF YORK

SIXTEENTH JUDICIAL CIRCUIT

2013-CP-46-00246

MORNINGSTAR FELLOWSHIP
CHURCH,

Plaintiff,

vs.

YORK COUNTY, SOUTH CAROLINA,

Defendants.

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)
) **PLAINTIFF'S OBJECTIONS AND**
) **RESPONSES TO DEFENDANT'S FIRST**
) **REQUEST FOR ADMISSIONS**
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)

Plaintiff objects and responds to Defendant's First Request for Admissions as follows:

GENERAL OBJECTIONS

1. Plaintiff objects to Defendant's First Request for Admissions to the extent that they purport to require the disclosure of information or documents which are protected by the attorney-client privilege or work product doctrine. Any document produced which would otherwise be privileged is not a waiver of any remaining privilege or protection from discovery.

2. Plaintiff objects to these discovery requests to the extent that they purport to expand the requirements of the South Carolina Rules of Civil Procedure.

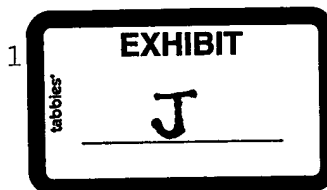
3. All documents will be available for inspection at the law offices of James, McElroy & Diehl, P.A. 600 South College Street, Charlotte, North Carolina or will be alternatively produced in a fashion and at such time to be agreed upon.

4. As this case is still in the early stages of discovery, Plaintiff will supplement these responses when further information warrants it.

REQUEST FOR ADMISSIONS

1. The document attached hereto as Exhibit "A" is a true, correct and genuine copy of the Development Agreement.

RESPONSE: It is admitted upon information and belief that a document that appears to be the public record of the Development Agreement is attached as Exhibit A.



2. That Morningstar contracted with Power Engineering, Inc. for services including the preparation of a commercial site plan regarding the Property.

RESPONSE: Plaintiff admits that Power Engineering was one of multiple firms it contracted with to work on the site plan, among other things.

3. That Power Engineering, Inc. submitted a proposed commercial site plan for the Property on Morningstar's behalf for review by York County staff on December 9, 2008.

RESPONSE: Admitted.

4. The Morningstar authorized Power Engineering, Inc. to communicate with York County staff regarding the proposed commercial site plan for the Property.

RESPONSE: Plaintiff admits that Power engineering was authorized to communicate with Defendant regarding aspects of the proposed construction project. However, matters of contract compliance were beyond the scope of that agency.

5. That York County approved the commercial site plan submitted by Power Engineering, Inc. on behalf of Morningstar on August 24, 2009.

RESPONSE: Denied.

6. That York County notified Power Engineering, Inc. of the approval of the commercial site plan for the Property on August 24, 2009.

RESPONSE: Plaintiff does not have sufficient information to admit or deny what York County claims to have submitted to Power Engineering. It is denied that any such acceptance was properly communicated to Plaintiff.

7. That Morningstar learned of York County's approval of the commercial site plan for the Property on or before September 1, 2009.

RESPONSE: Denied.

8. That since August 24, 2009, Morningstar has not provided to York County any draft or final bid, performance or payment bond(s) or letter(s) of credit as evidence of Morningstar's financial ability to complete Developer's work under the Development Agreement.

RESPONSE: It is admitted that Morningstar has not provided a draft or final bid, performance or payment bond or letter of credit.

9. That since August 24, 2009, Morningstar has not provided to York County any other documentary evidence of Morningstar's financial ability to complete Morningstar's work under the Development Agreement.

RESPONSE: Denied.

10. That since August 24, 2009, Morningstar has not provided to York County evidence that Morningstar has secured any final, unconditional commitment for financing of any portion of Morningstar's work under the Development Agreement.

RESPONSE: Admitted.

11. That since August 24, 2009, Morningstar has not secured any final, unconditional commitment for financing of Morningstar's work to renovate, rehabilitate or reconstruct the Tower.

RESPONSE: Admitted.

12. That York County notified Morningstar on February 4, 2010 that Morningstar had not provided any bid, performance or payment bonds, letter of credit or other evidence of Morningstar's financial ability to complete Morningstar's work under the Development Agreement.

RESPONSE: Admitted.

13. That since February 4, 2010, Morningstar has not provided to York County any draft or final bid, performance or payment bond(s) or letter(s) of credit as evidence of Morningstar's financial ability to complete Morningstar's work under the Development Agreement.

RESPONSE: It is admitted that Morningstar has not provided any draft or final bid, performance or payment bond or letter of credit since February 4, 2010.

14. That since February 4, 2010, Morningstar has not provided to York County any other documentary evidence of Morningstar's financial ability to complete Morningstar's work under the Development Agreement.

RESPONSE: Denied.

15. That since February 4, 2010, Morningstar has not provided to York County evidence that Morningstar has secured any final, unconditional commitment for financing of any portion of Morningstar's work under the Development Agreement.

RESPONSE: Admitted.

16. That Morningstar purchased real property consisting of approximately 3.56 acres located in York County, South Carolina, on or about January 6, 2009, for a purchase price of \$3,900,000.00.

RESPONSE: Admitted.

17. That Morningstar borrowed \$2,000,000.00 from Alliance Bank and Trust, Gastonia in connection with the purchase of approximately 3.56 acres located in York County, South Carolina, on or about January 6, 2009, for a purchase price of \$3,900,000.00.

RESPONSE: Admitted.

18. That Morningstar borrowed \$1,100,000.00 from Supra Southern, LLC in connection with the purchase of approximately 3.56 acres located in York County, South Carolina, on or about January 6, 2009, for a purchase price of \$3,900,000.00.

RESPONSE: Admitted.

19. That the document attached hereto as Exhibit "B" is a true, correct and genuine copy of the Title to Real Estate by which Morningstar acquired title to the Property that is the subject of the Development Agreement from Coulston Enterprises, Inc.

RESPONSE: It is admitted upon information and belief that a document which appears to be the public record of the Title to Real Estate by which Morningstar acquired title to the property from Coulston Enterprises, Inc. is attached as Exhibit B.

20. That the document attached hereto as Exhibit "C" is a true, correct and genuine copy of the Mortgage from Morningstar to First Citizens Bank & Trust Company recorded September 28, 2004, in the amount of \$1,300,000.00.

RESPONSE: It is admitted upon information and belief that a document which appears to be the public record of the Mortgage from Morningstar to First Citizens Bank & Trust Company is attached as Exhibit C.

21. That the document attached hereto as Exhibit "D" is a true, correct and a genuine copy of the Assignment of Rents from Morningstar to First Citizens Bank & Trust Company recorded September 28, 2004.

RESPONSE: It is admitted upon information and belief that a document which appears to be the public record of the Assignment of Rents from Morningstar to First Citizens Bank & Trust Company is attached as Exhibit D.

22. That the document attached hereto as Exhibit "E" is a true, correct and genuine copy of the satisfaction of the Mortgage from Morningstar to First Citizens Bank & Trust Company recorded October 14, 2005.

RESPONSE: It is admitted upon information and belief that a document which appears to be the public record of the satisfaction of the Mortgage from Morningstar to First Citizens Bank & Trust Company is attached as Exhibit E.

23. That the document attached hereto as Exhibit "F" is a true, correct and genuine copy of the satisfaction of the Assignment of Rents from Morningstar to First

Citizens Bank & Trust Company recorded October 14, 2005.

RESPONSE: It is admitted upon information and belief that a document which appears to be the public record of the satisfaction of the Assignment of Rents from Morningstar to First Citizens Bank & Trust Company is attached as Exhibit F.

24. That the document attached hereto as Exhibit "G" is a true, correct and genuine copy of the Mortgage from Morningstar to Evangelical Christian Credit Union recorded September 1, 2005, in the amount of \$8,800,000.00.

RESPONSE: It is admitted upon information and belief that a document which appears to be the public record of the Mortgage from Morningstar to Evangelical Christian Credit Union is attached as Exhibit G.

25. That the document attached hereto as Exhibit "H" is a true, correct and genuine copy of the Assignment of Rents from Morningstar to Evangelical Christian Credit Union recorded September 1, 2005.

RESPONSE: It is admitted upon information and belief that a document which appears to be the public record of the Assignment of Rents from Morningstar to Evangelical Christian Credit Union is attached as Exhibit H.

26. That the document attached hereto as Exhibit "I" is a true, correct and genuine copy of the UCC Financing Statement from Morningstar to Evangelical Christian Credit Union recorded September 1, 2005.

RESPONSE: It is admitted upon information and belief that a document which appears to be the public record of the UCC Financing Statement from Morningstar to Evangelical Christian Credit Union is attached as Exhibit I.

27. That the document attached hereto as Exhibit "J" is a true, correct and genuine copy of the satisfaction of the Mortgage from Morningstar to Evangelical Christian Credit Union recorded February 29, 2008.

RESPONSE: It is admitted upon information and belief that a document which appears to be the public record of the satisfaction of the Mortgage from Morningstar to Evangelical Christian Credit Union is attached as Exhibit J.

28. That the document attached hereto as Exhibit "K" is a true, correct and genuine copy of the satisfaction of the Assignment of Rents from Morningstar to Evangelical Christian Credit Union recorded February 29, 2008.

RESPONSE: It is admitted upon information and belief that a document which appears to be the public record of the satisfaction of the Assignment of Rents from Morningstar to Evangelical Christian Credit Union is attached as Exhibit K.

29. That the document attached hereto as Exhibit "L" is a true, correct and genuine copy of the Mortgage from Morningstar to Evangelical Christian Credit Union recorded March 3, 2008, in the amount of \$11,500,000.00.

RESPONSE: It is admitted upon information and belief that a document which appears to be the public record of the Mortgage from Morningstar to Evangelical Christian Credit Union is attached as Exhibit L.

30. That the document attached hereto as Exhibit "M" is a true, correct and genuine copy of the Assignment of Rents from Morningstar to Evangelical Christian Credit Union recorded March 3, 2008.

RESPONSE: It is admitted upon information and belief that a document which appears to be the public record of the Assignment of Rents from Morningstar to Evangelical Christian Credit Union is attached as Exhibit M.

31. That the document attached hereto as Exhibit "N" is a true, correct and genuine copy of the partial release of Mortgage from Morningstar to Evangelical Christian Credit Union recorded May 30, 2008.

RESPONSE: It is admitted upon information and belief that a document which appears to be the public record of the partial release of Mortgage from Morningstar to Evangelical Christian Credit Union is attached as Exhibit N.

32. That the document attached hereto as Exhibit "O" is a true, correct and genuine copy of the Mortgage from Morningstar to CommunityOne Bank, N.A. recorded May 23, 2008, in the amount of \$1,500,000.00

RESPONSE: It is admitted upon information and belief that a document which appears to be the public record of the Mortgage from Morningstar to CommunityOne Bank, N.A. is attached as Exhibit O.

33. That the document attached hereto as Exhibit "P" is a true, correct and genuine copy of the Mortgage from Morningstar to CommunityOne Bank, N.A. recorded May 23, 2008, in the amount for \$1,500,000.00.

RESPONSE: It is admitted upon information and belief that a document which appears to be the public record of the Mortgage from Morningstar to CommunityOne Bank, N.A. is attached as Exhibit P.

34. That the document attached hereto as Exhibit "Q" is a true, correct and genuine copy of the Mortgage from Morningstar to Alliance Bank and Trust, Gastonia recorded January 6, 2009, in the amount of \$2,000,000.00.

RESPONSE: It is admitted upon information and belief that a document which appears to be the public record of the Mortgage from Morningstar to Alliance Bank and Trust is attached as Exhibit Q.

35. That the document attached hereto as Exhibit "R" is a true, correct and genuine copy of the Assignment of Rents from Morningstar to Alliance Bank and Trust, Gastonia recorded January 6, 2009.

RESPONSE: It is admitted upon information and belief that a document which appears to be the public record of the Assignment of Rents from Morningstar to Alliance Bank and Trust is attached as Exhibit R.

36. That the document attached hereto as Exhibit "S" is a true, correct and genuine copy of the Mortgage from Morningstar to Supra Southern, LLC recorded January 6, 2009, in the amount of \$1,100,000.00.

RESPONSE: It is admitted upon information and belief that a document which appears to be the public record of the Mortgage from Morningstar to Supra Southern, LLC is attached as Exhibit S.

37. That the document attached hereto as Exhibit "T" is a true, correct and genuine copy of the Title to Real Estate by which Morningstar acquired title to 3.56 acres, Tax Map Number 7290000025 from Supra Southern, LLC, recorded January 6, 2009.

RESPONSE: It is admitted upon information and belief that a document which appears to be the public record of the Title to Real Estate by which Morningstar acquired title to 3.56 acres, Tax Map Number 7290000025 from Supra Southern, LLC is attached as Exhibit T.

38. That the document attached hereto as Exhibit "U" is a true, correct and genuine copy of the satisfied mortgage from Morningstar to Supra Southern, LLC dated October 5, 2009.

RESPONSE: It is admitted upon information and belief that a document which appears to be the public record of the satisfied mortgage from Morningstar to Supra Southern, LLC is attached as Exhibit U.

39. That the document attached hereto as Exhibit "V" is a true, correct and genuine copy of the Bill of Sale and Assignment of Lease for Hangar Unit #401 by and between Morningstar and 9265 Bravo, Inc., recorded May 14, 2008.

RESPONSE: It is admitted upon information and belief that a document which appears to be the public record of the Bill of Sale and Assignment of Lease for Hangar Unit #401 by and between Morningstar and 9265 Bravo, Inc. is attached as Exhibit V.

40. That the document attached hereto as Exhibit "W" is a true, correct and genuine copy of the Quit Claim Bill of Sale and Assignment of Lease to Hangar Unit #401 by and between Morningstar and William B. Whisenaut, recorded July 16, 2008.


RESPONSE: It is admitted upon information and belief that a document which appears to be the public record of the Quit Claim Bill of Sale and Assignment of Lease to Hangar Unit #401 by and between Morningstar and William B. Whisenaut is attached as Exhibit W.

41. That the document attached hereto as Exhibit "X" is a true, correct and genuine copy of the Dissolution of Easement recorded February 13, 2008, dissolving the easement previously reserved by Coulston Enterprises, Inc. to go onto the Property to demolish and remove the Tower.

RESPONSE: It is admitted upon information and belief that a document which appears to be the public record of the Dissolution of Easement previously reserved by Coulston Enterprises, Inc. is attached as Exhibit X.

This 15 day of May, 2013.

JAMES, MCELROY & DIEHL, P.A.

By 
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Attorneys for Plaintiff


CERTIFICATE OF SERVICE

I hereby certify that the foregoing **PLAINTIFF'S OBJECTIONS AND RESPONSES TO PLAINTIFF'S FIRST REQUEST FOR ADMISSIONS** has this date been delivered to COUNSEL for Defendant by facsimile, by electronic mail and by depositing a copy of same in the United States Mail, sufficient postage prepaid, addressed to him as follows:

Daniel J. Ballou
W. Keith Martens
Hamilton Martens Ballou & Carroll, LLC
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Michael K. Kendree
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This 15 day of May, 2013.