

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
(MIAMI DIVISION)

CASE NO.: 06-20975-CIV-HUCK / O'SULLIVAN

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

JACK P. UTSICK, ROBERT YEAGER,  
DONNA YEAGER, WORLDWIDE  
ENTERTAINMENT, INC., THE  
ENTERTAINMENT GROUP FUND, INC.,  
AMERICAN ENTERPRISES, INC.,  
and ENTERTAINMENT FUNDS, INC.

Defendants.

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**RECEIVER'S MOTION FOR AUTHORITY TO RETAIN  
REAL ESTATE BROKER TO MARKET REAL PROPERTY FOR SALE  
AND INCORPORATED MEMORANDUM OF LAW**

Michael I. Goldberg, the court-appointed receiver (the "Receiver") for Defendants, Worldwide Entertainment, Inc. ("Worldwide"), The Entertainment Group Fund, Inc. ("TEGFI"), American Enterprises, Inc. ("AEI") and Entertainment Funds, Inc. ("EFI"), by and through undersigned counsel, respectfully requests this Court enter an order authorizing the Receiver to retain a real estate broker to market real property for sale. In support of this motion, the Receiver states as follows:

1. On April 17, 2006, the Securities and Exchange Commission ("SEC") commenced an action (the "Complaint") in the United States District Court for the Southern District of Florida (the "Court") against Worldwide, TEGFI, AEI and EFI (collectively referred to as the "Receivership Entities") and John P. "Jack" Utsick ("Utsick"), Robert Yeager and

Donna Yeager. The Complaint alleged violations of the anti-fraud and registration provisions of the federal securities laws and sought an injunction against their further violation.

2. By Order dated April 20, 2006 (the "Receivership Order"), the Court appointed Michael I. Goldberg as receiver over the Receivership Entities with the power, duty and authority to administer and manage the Receivership Entities business affairs, funds and assets.

3. Under the terms of the Receivership Order, the Receiver is authorized to investigate the pre-receivership affairs of the Receivership Entities and to marshal and safeguard their assets for the protection and benefit of creditors.

4. On September 28, 2010, the Court entered an Order Closing Case (D.E. 662), wherein the Clerk of the Court was instructed to administratively close the case. However, the Order Closing Case provided that the Receiver shall continue to liquidate assets, settle claims, collect on judgments, and carry out his duties under the terms of the Order Appointing Receiver, subject to further Court approval.

5. One of the few remaining properties in the receivership estate is a 49.2 acre parcel of undeveloped land in St. Johns County, Florida (the "Property").

6. WE Entertainment, LLC, ("WE Entertainment"), and an affiliate of TEGFI, holds title to the Property.

7. In April of 2003, prior to the commencement of the receivership (and prior to WE Entertainment's ownership of the Property), TEGFI commissioned an environmental survey and various land use reports for the purpose of assessing the feasibility of constructing an outdoor amphitheatre on the Property.

8. In July 2003, TEGFI applied to St. Johns County to rezone the Property for cultural, entertainment and institutional use. After notice to the public and hearing, in November

2003, the Board of County Commissioners for St. Johns County enacted a Planned Use Development Ordinance authorizing the rezoning of the Property for development as a music, cultural or entertainment center.

9. Utsick created WE Entertainment to take title to the Property and on January 30, 2004, pursuant to that certain Trustee's Deed recorded in the Official Records of St. Johns County.

10. Due to the filing of this case, Utsick's plans to develop the Property did not materialize. Today, the Property remains undeveloped.

11. This Court has previously approved the retention of Terranova Corporation ("Terranova") to market the Property for sale.

12. Terranova's exclusive listing agreement has expired and the Receiver now seeks authority to retain Cantrell & Morgan, Inc. (the "Broker") to market the Property. A true and correct copy of the Agreement is attached hereto as Exhibit 1.

13. The Broker is a full service commercial real estate brokerage firm consistently ranked among the top brokerage firms in Northeast Florida. The Receiver has retained the Broker to sell property in other receivership cases, with positive results. The Receiver believes the Broker is qualified to market the Property for sale.

14. The Receiver seeks authority from the Court to execute an Exclusive Listing Agreement ("Agreement") with the Broker. (Either party may terminate the Agreement by providing thirty days written notice to the other party.) A true and correct copy of the Agreement is attached hereto as Exhibit 1.

15. In the event the Receiver receives an acceptable offer for the Property, the Receiver shall file another motion with this Court seeking approval of such offer.

### Memorandum of Law

The district court has broad powers and wide discretion to determine relief in an equity receivership. *SEC v. Elliott*, 953 F.2d 1560, 1566 (11<sup>th</sup> Cir. 1992). These powers include the authority to approve the sale of property of the Receivership Entities. Clark on Receivers § 482 (3<sup>rd</sup> ed. 1992) citing *First National Bank v. Shedd*, 121 U.S. 74, 87, 7 S.Ct. 807, 814, 30 L.Ed. 877 (1887) (A court of equity having custody and control of property has power to order a sale of the property in its discretion). Moreover, 28 U.S.C. § 2001 provides procedures for the sale of realty under any order or decree of any court of the United States. Generally, realty shall be sold at public sale within the district where the receiver was first appointed. 28 U.S.C. § 2001(a). However, after notice and hearing, the court may order the sale of realty at private sale upon terms and conditions approved by the court, if the court finds that the best interests of the estate will be conserved thereby. 28 U.S.C. § 2001(b). *See also Tanzer v. Huffiness*, 412 F.2d 221, 222 (3<sup>rd</sup> Cir. 1969).

In order to maximize the value of the Property, the Receiver seeks to sell the Property by private sale. Restrictions on the development and use of the Property raises challenges for its sale. Any subsequent owner of the Property who wants to develop the property for use other than as currently zoned, with need to seek approval from St. Johns County. Moreover, access to the Property is currently limited and a purchaser will be responsible for widening and extending the adjoining roadway. Signage is limited and regulated by the St. Johns County Land Development Code. Any subsequent owner of the Property who wants to develop the Property for use as something other than entertainment center will need to apply to St. Johns County to modify the current land use designation for the Property.

Typically, before confirmation of a private sale, the court shall appoint three disinterested persons to appraise the property to ensure that no private sale shall be confirmed at a price less than two-thirds of the appraised value. 28 U.S.C. § 2001(b). However, the Receiver does not believe it is necessary for the Court to appoint multiple disinterested persons to appraise the Property, because Terranova will market the Property and in the event the Receiver receives an acceptable offer, the Receiver shall return to Court seeking approval of the offer.

**WHEREFORE**, the Receiver, Michael I. Goldberg, respectfully requests this Court to enter an order authorizing the Receiver to retain Cantrell & Morgan, Inc. to market and sell the Property and to grant such other relief as is just and proper.

**LOCAL RULE 7.1 CERTIFICATION OF COUNSEL**

Pursuant to Local Rule 7.1, undersigned counsel hereby certifies that the Receiver has conferred with counsel for the United States Securities and Exchange Commission, who has no objection to the relief requested.

Respectfully submitted,

**AKERMAN SENTERFITT**  
Counsel for Receiver  
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By: /s/ Joan M. Levit  
Joan M. Levit, Esq.  
Florida Bar Number: 987530

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served by CM/ECF on October 14, 2013, on all counsel or parties of record on the Service List below.

/s/ Joan Levit

**SERVICE LIST**

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***Counsel for Jack P. Utsick***  
Served by CM/ECF

**EXHIBIT 1**



**CANTRELL & MORGAN, INC.**  
**EXCLUSIVE LISTING AGREEMENT**

**SELLER:** Michael I. Goldberg, as Receiver ("Seller")

**SITE LOCATION:** 49.19 Acres of raw land south of Agricultural Drive, St. Augustine, Florida 32092 ("Property")

**PARCEL NUMBER:** 095510-0020; St Johns County, Florida

**BROKER ASSOCIATE:** Julie A. Bohn

1. Seller hereby employs Cantrell & Morgan ("Broker") on an exclusive basis to negotiate a sale of the Property for a period commencing upon execution of this Exclusive Listing Agreement and ending midnight ninety (90) days from such execution.
2. The Listing Price shall be set at \$1,050,000.00, or based on terms acceptable to the Seller.
3. For the sale of the subject Property, the commission shall be calculated at 6% of the gross sales price. Commission will be paid at closing.

In the event the Seller sells or otherwise disposes of its interest in the Property, during the term and pursuant to the terms of this Agreement, the Seller shall remain liable for payment of the commissions provided in this Agreement unless the purchaser or transferee assumes all of such obligations in writing.

4. Broker and Seller agree to the following commission exceptions:

In the event the property is sold to St Johns County then Broker agrees that no commission shall be due Broker in connection with the sale of the Property.

5. Seller further agrees to pay Broker a commission in accordance with the statement above if, within thirty (30) calendar days after expiration or termination of the Term, the Property is sold to, or Seller contracts to sell the Property to, any person or entity procured by Broker directly or to whom the Property has been submitted by Broker provided Broker had meaningful exchanges about the Property conducted in writing or through negotiations (but not including parties to whom a submission was made which did not result in meaningful negotiations). Broker is authorized to continue negotiations with such persons or entities. Broker agrees to submit a list of such persons or entities to Seller not later than fifteen (15) days following the expiration or termination of the Term.

6. Commissions shall be only payable at closing, and for a transaction that in fact closes.
7. Seller agrees to cooperate with Broker in effecting sales of the Property and refer to Broker all inquiries regarding the Property, such that all negotiations are through Broker. Broker is exclusively authorized to advertise the Property and exclusively authorized to place signs on the Property. Seller and its counsel will be responsible for determining the legal sufficiency of a purchase and sale contract, and any other documents relating to any transaction contemplated by this Agreement.
8. This Agreement and the transactions contemplated hereby (including without limitation, any subsequent purchase and sale agreement) are subject to the approval by court order in that certain action entitled *Securities & Exchange Commission vs. Jack P. Utsick, Robert Yeager, Donna Yeager, Worldwide Entertainment, Inc., The Entertainment Group Fund, Inc., American Enterprises, Inc., and Entertainment Funds, Inc.* pending in the U.S. District Court for the Southern District of Florida, Case Number: 06-20975-CIV-HUCK/BANDSTRA (the "Court Order"). In the event the Court Order for approval of this Agreement is not received within sixty (60) days of execution of this Agreement by Agent and Seller, then either Agent or Seller shall have the right to cancel this Agreement by the delivery of written notice thereof to the other, whereupon this Agreement shall be deemed terminated and the parties shall be thereafter relieved of any and all further obligations each to the other hereunder, except as otherwise expressly provided herein. No cancellation fee or reimbursements to Agent shall be made if this Agreement is not approved by the Court. Seller shall not be liable for any commission or fees or otherwise if this Agreement or any subsequent sale is not approved by the Court.
9. Each signatory to the Agreement represents and warrants that (s)he has full authority to sign this Agreement on behalf of the party for whom (s)he signs and that this Agreement binds such party.
10. This Agreement constitutes the entire agreement between Seller and Broker and supersedes all prior discussions, negotiations and agreements, whether oral or written. No amendment, alteration, cancellation or withdrawal of this Agreement shall be valid or binding unless made in writing and signed by both Seller and Broker. This Agreement shall be binding upon and shall benefit the heirs, successors and assignees of the parties.
11. Either party may terminate this Agreement by providing thirty (30) days written notice to the other party.

[SIGNATURES TO FOLLOW]

The undersigned Seller hereby acknowledges receipt of a copy of this Agreement.

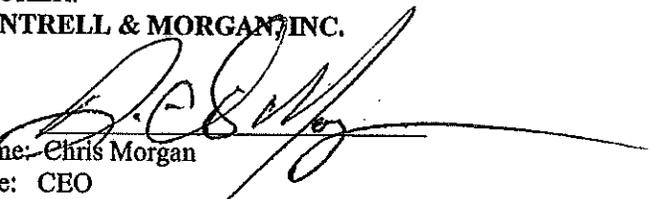
APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2013.

ACCEPTED:

**SELLER:**  
**MICHAEL I. GOLDBERG, as RECEIVER**  
**for Worldwide Entertainment, Inc.,**  
**The Entertainment Group Fund, Inc.,**  
**American Enterprises, Inc., and**  
**Entertainment Funds, Inc.**

By: \_\_\_\_\_  
Name: Michael I. Goldberg  
Title: Receiver  
Address: 350 E. Las Olas Blvd., Suite 1600  
Ft. Lauderdale, Florida 33301-2229

**BROKER:**  
**CANTRELL & MORGAN INC.**

By:   
Name: Chris Morgan  
Title: CEO  
Address: 200 W. Forsyth Street, Suite 400  
Jacksonville, FL 32202