

**IN THE UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF MISSOURI**

**In Re:** )  
 )  
**PAYLESS CASHWAYS, INC.,** ) **Case No. 01-42643**  
 )  
**Debtor.** )

**ORDER APPROVING UNIFORM BIDDING PROCEDURES FOR SALE  
OF THE ESTATE'S INTEREST IN CERTAIN REAL PROPERTY AND AUTHORIZING  
THE TRUSTEE TO GRANT EXPENSE REIMBURSEMENT  
TO POTENTIAL PURCHASERS PURSUANT TO 11 U.S.C. §§363 AND 105**

The matter now before the Court is the Chapter 11 Trustee's Motion Pursuant To 11 U.S.C. §§363 And 105 For Order (1) Approving Uniform Bidding Procedures For Sale Of The Estate's Interest In Certain Real Property; And (2) Authorizing The Trustee To Grant Expense Reimbursement To Potential Purchasers ("Motion"). Capitalized terms used but not defined in this Order shall have the same meaning set forth in the Motion. After having considered the Motion, the withdrawal of the response and limited objection to the Motion filed by the Official Committee of Unsecured Creditors ("Committee"), and statements of counsel, the Court hereby finds and determines that proper and sufficient notice of the Motion has been given, and that the relief requested in the Motion, as modified herein, is necessary and proper under the circumstances and is in the best interests of the estate, and it is hereby,

ORDERED, that

1. The Bidding Procedures attached to the Motion, with Section 14.b being deleted, are approved; and, as so modified, are attached to this Order;
2. The Bidding Procedures approved herein shall, until further Order of the Court, govern the submission and consideration of all initial offers and competing bids for the real property and the improvements thereon owned by the Debtor;

3. Pursuant to the Motion, in the event an Initial Offeror is entitled to Expense Reimbursement as approved by the Court, such Expense Reimbursement shall be paid to the Initial Offeror at the time of the closing and out of the proceeds of the sale of the subject Property or Properties;

4. The Trustee is further authorized and empowered to take such additional and other steps as may be necessary or appropriate to effectuate the Bidding Procedures approved by this Order; and

5. This Order shall be effective immediately and the stay period of Fed. R. Bank P. 6004(g) shall not apply.

Dated: November 13, 2001

/s/Arthur B. Federman  
HONORABLE ARTHUR B. FEDERMAN  
United States Bankruptcy Judge

KATHRYN BUSSING TO SERVE

## EXHIBIT A

### PAYLESS CASHWAYS, INC., Chapter 11 Case No. 01-42643-3-11

#### BIDDING PROCEDURES

The following bidding procedures shall govern the sale of the estate's interest in certain non-residential real property (each a "Property" and collectively, the "Properties"). The procedures have been approved by Order of the Honorable Arthur B. Federman, United States Bankruptcy Judge, dated November 13, 2001, of the United States Bankruptcy Court for the Western District of Missouri ("Court") in the above-referenced Chapter 11 case, which was commenced on June 4, 2001. No Property shall be deemed to be sold unless the Court has approved such sale and the same is in fact consummated. The bidding procedures that shall apply are as follows:

1. Form of Initial Offer – An Initial Offer must be in the form of the Real Estate Sale Contract attached hereto as Exhibit A.
2. Form of Competing Offer - A Competing Offer must be in the form of an interlineated copy of the contract submitted by the Initial Offeror, with any and all changes clearly marked and initialed. Competing Offers must be made upon the same general terms and conditions as the Initial Offer, provided, however, that the Court appointed Chapter 11 Trustee ("Trustee") reserves the right to consider a Competing Offer on different terms and conditions if the Trustee believes that such Competing Offer will maximize recovery to the estate.
3. Bids on Individual Properties vs. Package Bids – bids may be made on individual Properties or on a group or package of Properties ("Package Bid"). The Trustee reserves the right to solicit bids for any individual Property that is the subject of a Package Bid. In the event any of the proposed sales involve individual Properties that are part of one or more Package Bids or involve overlapping Package Bids, the Trustee further reserves the right to request that the Court authorize the sale of any individual Property or combination of Properties to a particular bidder as the Trustee deems, in its business judgment, to be in the best interest of the estate and its creditors.
4. Overbid Requirement - Competing Offers for an individual Property must provide for a total purchase price that is at least \$15,000 greater than the purchase price provided in the Initial Offer. In the event of competing Package Bids, the Trustee reserves the right to require a minimum overbid on such Package Bids.
5. Deposit - Any Competing Offer for a Property must be accompanied by a deposit in the form of a wire transfer or immediately available funds, payable to First American Title Insurance Company ("Escrow Agent") in an amount equal to five percent (5%) of the amount of such Competing Offer ("Deposit"). Deposits shall be returned upon completion of an Auction Hearing (as defined below) to all parties but the two highest bidders, whose Deposits shall be retained until the transfer of title to the Property from the Trustee to the successful bidder is consummated and the estate has received all sums due in connection with such transaction ("Closing"). At the time of the Closing, the Deposit of the successful bidder shall be credited

to the agreed purchase price and the Deposit of the remaining bidder, unless forfeited as provided below, shall be returned to such bidder.

6. Proof of Financial Wherewithal – Upon request by the Trustee or its advisors, Competing Offers shall be accompanied by written proof of financial wherewithal (e.g., audited financial statements, copy of financing commitment, copy of bank account statements, etc.) sufficient to close a sale at the price of the Competing Offer, such proof being in form and content acceptable to the Trustee and its advisors.
7. Submission of Competing Offers - The original of a Competing Offer and the Deposit shall be submitted to:

Blaine McLellan, President  
Expert Real Estate Advisors, Inc.  
6299 Nall Avenue, Suite 350  
Mission, Kansas 66202  
(913) 362-3377

8. Auction Hearing – All proposed sales of the estate’s interest in real estate shall be submitted to the Court for approval upon notice and hearing. All parties who have requested an interest in one or more of the Properties shall receive notice of the hearing at which the Court will consider the proposed sale. Prior to and at the time of such hearing, any party may submit a Competing Offer which complies with procedures set forth in this Motion, in which case, an auction will be conducted at the Hearing (“Auction Hearing”). All parties who have contacted the Trustee or its advisors expressing an interest in a Property shall receive a notice of the Hearing. The Court is located at 400 E. 9<sup>th</sup> Street, Sixth Floor, Kansas City, Missouri. All interested bidders and/or their counsel may appear in person or by telephone. Requests to appear by telephone must be made prior to the Hearing by contacting either the Court’s Chambers at (816) 512-1910 or the Trustee’s counsel, Michael M. Tamburini (816) 983-8159 or Benjamin F. Mann (816) 983-8126.
9. Minimum Bid Increments - If an Auction Hearing is held, subsequent bids above the amount of the then highest Competing Offer must be made in minimum increments of the greater of \$5,000 or one percent (1%) of the purchase price provided for in the Initial Offer.
10. Additional Deposit - At the conclusion of any Auction, the successful bidder must transfer to the Trustee, via wire transfer or immediately available funds to the Escrow Agent, an amount equal to the difference between ten percent (10%) of the prevailing bid at the Auction Hearing and the Deposit previously submitted by such bidder.
11. Offers to Remain Open - All Competing offers (written and verbal) shall be absolute offers to purchase the Property for cash only and shall not be subject to financing contingencies, unperformed due diligence or any other contingency. In addition, subject to the terms of any contract, all offers (written or verbal) shall remain open and irrevocable until the Closing, regardless of whether a Deposit has been returned. Acceptance of a Competing Offer does not constitute rejection of an Initial Offer or any other Competing Offer until the

completion of the Closing. No offer shall be deemed rejected unless and until rejected by the Trustee in writing.

12. Withdrawal of Property From Auction - Notwithstanding anything to the contrary contained herein, the Trustee reserves the right to withdraw a Property from an Auction Hearing if the circumstances indicate that the estate would benefit by such withdrawal.
13. Additional Bidding Rules – Prior to the commencement of any Auction Hearing, the Trustee may establish such other rules of bidding as the Trustee deems necessary or appropriate.
14. Expense Reimbursement – (a) if the Trustee fails to consummate the transaction proposed in an Initial Offer and such failure is because the Trustee accepts a Competing Offer and the sale is closed and the estate receives the purchase price from such Competing Offeror, the Initial Offeror shall be reimbursed its actual, documented, reasonable out-of-pocket expenses incurred, not to exceed \$15,000 for each Property that is the subject of such Initial Offer (“Expense Reimbursement”).
  - (b) Accepting an agreement from the Trustee to grant Expense Reimbursement shall commit an Initial Offeror to provide the Trustee with copies of title reports and other results of due diligence (including any reports prepared in connection therewith) as the Trustee may request at any time, and such materials may be shared by the Trustee with Competing Offerors.
15. Additional Terms – additional terms and conditions, as approved by this Court to the extent necessary, may be imposed and announced at the Hearing.
16. Post-Auction Matters - (a) The highest and best bid received at the Auction, which bid shall be determined in the sole discretion of the Trustee, shall commit the person or entity making the bid to consummate the purchase of the relevant Property or Properties on or before the date established by the Initial Offer, whether such offer is a Competing Offer or the Initial Offer. The Trustee shall have the right to consider factors other than the monetary consideration offered (including, but not limited to, Package Bids, timing considerations, contingencies attached to an offer or the Offeror’s ability to close the transaction) in determining what is the highest and best bid.
  - (b) After any Auction is conducted, the two highest and best bids received at the Auction shall be presented to the court for approval at the Hearing. Following Court approval, the Debtors shall consummate the sale of the Property to the highest and best bidder.
  - (c) If all conditions to the obligations of the highest and best bidder to purchase the Property have been satisfied and such bidder shall fail or refuse to consummate the purchase of the relevant Property or Properties on or before the date established by the parties for the closing (“Closing Date”), its Deposit shall be forfeited and retained by the Trustee as liquidated damages. In such event, the Trustee shall have the option to demand and receive an additional deposit from the next highest bidder

(whose bid was previously approved by the Court) in an amount equal to the difference between ten percent (10%) of such bid and the Deposit previously submitted by such bidder. If all conditions to such bidder's obligations to consummate the purchase have been satisfied and for any reason it shall fail or refuse to consummate the purchase of the Property or Properties on or before the Closing Date, then such bidder's Deposit shall also be forfeited and retained by the Trustee as liquidated damages.

17. No Representations or Warranties – the Properties shall be transferred “as is” and “where is”, without any representation or warranty of fitness or condition, and no bids shall provide otherwise.
18. Jurisdiction - Any and all disputes related to the auction and the sale of the Properties shall be subject to the exclusive jurisdiction of the Court. By submitting a Competing Offer, Initial Offer and/or participating in the Auction Hearing, all bidders and their brokers, if any, expressly consent to the jurisdiction of the Court.
19. Additional Information – Questions regarding these bidding procedures can be directed to the following counsel for the Trustee:

Kathryn Bussing  
Blackwell Sanders Peper Martin LLP  
2300 Main Street, Suite 1000  
P.O. Box 419777  
Kansas City, Missouri 64141-6777  
(816) 983-8000  
FAX # 816 983-8080

## EXHIBIT A

### REAL ESTATE SALE CONTRACT

THIS CONTRACT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2001, (the "Execution Date") by and between PAYLESS CASHWAYS, INC., a Delaware corporation ("Seller") and \_\_\_\_\_ and/or Assigns ("Buyer").

WHEREAS, the parties desire to enter into this Contract to incorporate all prior negotiations and dealings of the parties with respect to the purchase and sale of certain property hereinafter described.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, the payment of the Deposit and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Seller and Buyer, the parties hereto agree as follows:

1. Contract Subject to Higher and Better Offers and Bankruptcy Court Approval. Seller is a debtor under the management of a Chapter 11 Trustee, in Chapter 11 proceedings pending before the United States Bankruptcy Court for the Western District of Missouri at Kansas City ("Bankruptcy Court"), Case No. 01-42643-11-ABF. This Contract is subject to higher and better offers which may be presented to the Bankruptcy Court at any time before or at the hearing to be scheduled for consideration of this proposed sale.

2. Description of Subject Property. Seller hereby agrees to sell to Buyer and Buyer agrees to buy from Seller the following real property, consisting of land and improvements in \_\_\_\_\_, \_\_\_\_\_ County, State of \_\_\_\_\_, described in Exhibit A attached hereto and incorporated herein by reference, together with the following property now attached or located thereon, to-wit: all electric, lighting, plumbing, ventilating, heating and air conditioning fixtures and equipment. Said land, improvements and fixtures are hereinafter collectively referred to as the "Property."

3. Purchase Price. Subject to the terms and conditions of this Contract, the purchase price shall be the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the "Purchase Price"), which Buyer agrees to pay to Seller as follows:

(a) Within three (3) business days after the date hereof, Buyer will pay and deliver to First American Title Insurance Company, National Accounts Division in Houston, Texas (the "Title Company"), in United States Currency, the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the "Deposit"). Title Company shall hold the Deposit in trust for the mutual benefit of the parties in accordance with the provisions of this Contract.

(b) Buyer will pay the balance of the Purchase Price, in cash, at Closing (as defined herein).

4. Closing. The "Closing" shall occur on \_\_\_\_\_, 2001, or on such earlier date mutually agreed to in writing by the parties (the "Closing Date"), at the offices of the Title Company, and possession shall be given to Buyer on that date.

5. Taxes. All taxes and expenses relating to the Property shall be prorated between Buyer and Seller as of the Closing Date. All property taxes and all installments of special assessments against the Property due and payable for the year of Closing shall be prorated between Seller and Buyer as of the date of Closing.

6. Title.

(a) Seller shall deliver to Buyer within twenty (20) days after the Execution Date a standard title commitment (the "Title Commitment"), issued through the Title Company, legally describing the Property, listing Buyer as the prospective named insured and showing as the policy amount the Purchase Price for the Property. Such Title Commitment shall be accompanied by copies of all documents referred to therein that will not be released at or prior to Closing. The title policy to be issued pursuant to the Title Commitment shall be on the most current standard form used by the Title Company or an equivalent approved by Buyer and shall insure good and marketable fee simple title subject to the Permitted Exceptions. Seller shall pay the premium for said standard Owner's Policy. Buyer shall pay any premiums for endorsements to the Owner's Policy and for any lender's policy to be issued.

(b) Buyer shall have fifteen (15) days after receipt of the Title Commitment (the "Title Review Period"), in which to notify Seller of any objections Buyer has to any matters that are set forth in the Title Commitment. Any matters to which Buyer does not object within the Title Review Period shall be deemed to be permitted exceptions to the status of Seller's title (the "Permitted Exceptions"). With regard to items to which Buyer does object within the Title Review Period, Seller shall cure such objections prior to Closing. Notwithstanding the foregoing, if Seller is unable or unwilling to cure such objections prior to Closing, it being understood that Seller is not required to cure any such objections, Buyer may at Buyer's option waive the objections not cured, in which event the same shall become Permitted Exceptions, or terminate this Contract by written notice to Seller and the Deposit shall be returned to Buyer.

7. Environmental Representation. To the best of Seller's knowledge and belief, no notice has been served on Seller from any entity, governmental body or individual claiming any violation of any law, regulation, ordinance or code, or requiring compliance with any law, regulations, ordinance or code, or demanding payment or contribution, for environmental damage or injury to natural resources.

8. Buyer's Right of Inspection. On or before a date that is thirty (30) days following the Execution Date (the "Inspection Period"), Buyer shall have the right to:

(a) Conduct a Phase I Environmental Site Assessment and any other non-invasive assessments/inspections on the Property it deems necessary. Seller agrees that Buyer, Buyer's employees, agents and contractors will have access to the Property at reasonable times for purposes of conducting such site assessment. It is provided, however, that: (i) Buyer will give reasonable, written notice of the times and purposes of any such entry to such person as Seller will from time to time designate and Seller will have the right to have a representative present at the time such assessment is made; (ii) Buyer will treat, and cause its various representatives, agents or contractors, to treat all information obtained pursuant to the terms hereof, as confidential; (iii) Buyer will provide Seller copies of the assessment and any other information received or developed by Buyer with respect to the Property with the understanding that if Buyer does not acquire the Property, Seller may use the assessment and other information acquired by Buyer as Seller elects,

without cost to Seller; and (iv) Buyer agrees to indemnify and save harmless the Seller from any claims or demands that may be made by the Buyer or any third party against the Seller by virtue of the privilege of access extended hereunder (such as, but not limited to, liability or damage to any persons or property suffered because of Buyer's entry, audits, inspections and investigations and including, without limitation, attorneys' fees and court costs).

(b) Buyer shall have until the date that is ten (10) days after the end of the Inspection Period to notify Seller in writing of Buyer's objections to the environmental condition of the Property or any other objections to the Property, and Seller shall have until the Closing to correct such objections. If Seller is unable or unwilling to cure such objections, Buyer may waive such objections and proceed with the Closing or terminate this Contract, in which latter case the Deposit shall be returned to Buyer and all obligations hereunder shall be of no further force and effect. All matters not timely or properly objected to by Buyer shall be deemed accepted by Buyer.

9. Conditions Precedent to Closing. The obligation of Seller to convey the Property to Buyer is subject to the satisfaction, on or before the Closing, of the following conditions:

- (a) The release of any mortgage encumbering the Property; and
- (b) Final Order of the Bankruptcy Court approving the sale.

10. Deliveries at Closing. At Closing, subject to Buyer's obligations hereunder, Seller shall: (a) deliver to the Title Company for recording a special warranty deed (the "Deed") from Seller to Buyer properly executed and conveying the Property in fee simple to Buyer, subject to all liens, encumbrances and other title matters whether or not of record; zoning regulations; ordinances and laws of the city, county, state in which the Property lies; any and all facts which may be disclosed by an accurate survey; and (b) deliver any insurance proceeds or condemnation award with respect to any casualty or condemnation, respectively, as provided in Section 13 hereof. At Closing, Buyer shall deliver to the Title Company, as agent for Seller, the Purchase Price. In the event the Title Company declines to issue its title insurance policy at Closing and in the manner provided in this Contract, then this Contract shall be null and void and the Deposit shall be returned to Buyer as Buyer's sole remedy.

11. Closing Costs. Buyer agrees to pay all recording and transfer fees and taxes assessed with respect to the transfer of the Property, including but not limited to stamp and revenue taxes or fees, and gross receipts taxes payable with respect to Purchase Price. Seller agrees to pay the cost of Buyer's owner's title policy (although Buyer shall pay the cost of any endorsements) and the cost of recording releases of deeds of trust and/or mortgages encumbering the Property. The parties agree to share equally any escrow charges of the Title Company and any other Closing costs.

12. AS-IS. Buyer acknowledges and agrees that by closing this transaction (i) it takes title to and possession of the property in its then "as-is, where is, with all faults" condition, and (ii) it has fully examined and inspected the Property and takes the Property in its existing condition, including, but not limited to, its environmental condition. Buyer expressly acknowledges that Seller has not made, and Buyer has not relied upon, any warranty or representation as to the condition of the Property, its compliance with applicable federal, state or local governmental laws or regulations, or its fitness or suitability for Buyer's intended use, and Seller shall have no liability to Buyer for the condition of the property. Upon transfer of title to the Property to Buyer, Buyer expressly accepts and assumes all liability associated with the condition of the Property upon transfer of title, as

defined by CERCLA, and all federal, state or local governmental laws or regulations, as amended from time to time and all principals of common law. Buyer agrees to indemnify, defend, save and hold harmless Seller, its subsidiaries, affiliates, successors and assigns and their respective directors, officers, employees, shareholders, representatives and agents from and against any and all losses, liabilities, damages, costs and expenses (including, but not limited to, reasonable attorney's and expert's fees) suffered, incurred by, or asserted against Seller to the extent they arise out of or result from the liability accepted and assumed by Buyer in this Paragraph. The terms of this paragraph shall survive Closing.

13. Casualty or Condemnation. If before the recording of the Deed any of the improvements on the Property are destroyed or substantially damaged by fire or any other casualty or any substantial part of the Property shall be taken by condemnation (including a deed given in lieu thereof), Buyer shall have the option of enforcing this Contract (and in such event the insurance proceeds or condemnation award shall belong to Buyer) or canceling the Contract by written notice given within ten (10) days thereafter. If canceled, the Deposit shall be returned to Buyer, this Contract shall be null and void, and the parties' obligations hereunder shall be of no further force and effect.

14. Default. If there has been performance of this Contract on the part of Seller, and Buyer fails to comply herewith, at the time specified for Closing, then all rights of Buyer hereunder shall be terminated and the Deposit shall be paid over to Seller, and this Contract may or may not be operative thereafter at the option of the Seller. Time is of the essence of this Contract.

15. Commissions. Seller has utilized the services of Expert Real Estate Advisors, Inc. ("Expert") as its listing broker for this transaction, acting as exclusive agents for Seller. Buyer has utilized the services of \_\_\_\_\_ ("\_\_\_\_\_"), acting as exclusive agents for Buyer. Seller shall pay total commissions of \_\_\_\_\_ percent (\_\_\_\_%) of the Purchase Price at closing. Expert shall receive \_\_\_\_% and \_\_\_\_\_ shall receive \_\_\_\_%. Except for the brokers set forth above, the parties represent that they have not engaged any other broker and agree to indemnify and hold the other harmless from anyone claiming a commission/fee through them.

16. Attorneys' Fees. In the event either party fails to perform any of its obligations under this Agreement or in the event a dispute arises concerning the meaning or interpretation of any provisions of this Agreement, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder including, without limitation, court costs and reasonable attorneys' fees.

17. Notices. Any notices required herein shall be deemed given when sent in the U.S. Mail, either registered or certified, return receipt requested, or by Federal Express or other overnight delivery service requiring a signature upon receipt, to the parties at the following addresses:

**BUYER:**

**SELLER:**

PAYLESS CASHWAYS, INC.  
% Expert Real Estate Advisors, Inc.  
4800 Rainbow Boulevard, Suite 200  
Westwood, Kansas 66205  
ATTN: Michele Hart  
913-362-3377 Phone  
913-362-3113 Fax

17. Acceptance. This offer shall become null and void unless Buyer delivers a fully executed copy hereof to Seller on or before 5:00 p.m. on \_\_\_\_\_, 2001.

18. Survival. No representations, warranties, and indemnities set forth herein shall survive the closing, default or earlier termination of this Contract, unless expressly provided herein.

19. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of \_\_\_\_\_.

20. Assignment. Buyer shall not assign this Contract without Seller's prior written consent.

21. Binding Effect. This Contract is binding upon the parties and their respective permitted successors and assigns.

22. Time. Time is the essence of this Contract.

IN WITNESS WHEREOF, said parties hereby execute this Contract effective the date first above written.

**SELLER:**

PAYLESS CASHWAYS, INC., a Delaware corporation

By:

Kelly Abney, Vice President

**BUYER:**

By:

Name:

Title: