

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

In re:

GENERAL GLASS COMPANY, INCORPORATED

**Case No. 14-20299
Chapter 11**

Debtor-in-Possession.

**MOTION TO SELL REAL ESTATE LOCATED AT 1900 12TH AVENUE
PARKERSBURG, WEST VIRGINIA FREE AND CLEAR
OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS,
PURSUANT TO 11 U.S.C. § 363(b), (f) AND (m), § 1142(b), AND § 105, AND FED. R.
BANKR. P. 2002, 3020 AND 6004, APPROVING COMPENSATION OF BROKER AND
AUTHORIZING DISTRIBUTION OF PROCEEDS OF SALE**

The Debtor, General Glass Company, Incorporated (“General Glass” or “Debtor”), files this motion for authority to sell the Debtor’s real estate located at 1900 12th Avenue, Parkersburg, West Virginia (Parkersburg Property), free and clear of all liens, claims, encumbrances and interests pursuant to 11 U.S.C. §§1142, 363 and 105 for the sum of \$200,000.00. In support of its motion, the Debtor states as follows:

Background

1. General Glass filed a petition for relief under Chapter 11 of Title 11 of the United States Code on June 10, 2014.
2. On February 2, 2017 this Court entered an Order confirming the Debtor’s Chapter 11 Plan of Liquidation. The Debtor’s Plan as confirmed provides for the sale of the Debtor’s Parkersburg Property at public auction within 60 days of the Effective Date of the Plan.
3. On April 6, 2017 a public auction of the Parkersburg Property was conducted by Goldman Associates, Inc. Although the sum of \$5,000 was expended on advertising, there were no bids. The auction was concluded without a sale.

4. Following the auction, the Debtor contacted Claire Barth and requested that the Parkersburg Property be again listed for sale. Ms. Barth, previously employed by WV Commercial, LLC, was the Debtor's court authorized real estate broker during the bankruptcy proceeding. Ms. Barth had successfully brokered the Debtor's sale of its Charleston Property.

5. Beginning in April 2017, Ms. Barth, now employed at Berkshire Hathaway, listed the Parkersburg Property at a price of \$345,000 with an agreed broker commission of 6%. The Debtor received no offers for the Parkersburg Property until February 2018. On February 6, 2018, Dunbar Excavation and Snow Removal, LLC ("Purchaser") offered to purchase the Property for \$190,000.00. After a counteroffer was made by the Debtor, a price of \$200,000.00 was agreed to by the parties. **See Exhibit A.**

6. Because the Debtor's Chapter 11 Plan provides for the sale of the Parkersburg Property at public auction, the Buyer's title company has requested that the Debtor seek approval by the Bankruptcy Court and entry of an order authorizing the sale of the Parkersburg Property to Dunbar Excavation and Snow Removal, LLC at private sale free and clear of liens.

7. The Debtor does not otherwise seek to amend its Chapter 11 Plan and the proceeds of sale of the Parkersburg Property, less broker commission and closing costs, will be distributed in accordance with the terms of the Chapter 11 Plan approved by this Court.

8. This Court has jurisdiction over this motion pursuant to 11 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (N).

9. The Debtor seeks entry of an order pursuant to 11 U.S.C. §§1142(b) and 363 authorizing the sale of the Parkersburg Property to Dunbar Excavation and Snow Removal, LLC free and clear of liens and encumbrances with the proceeds of sale distributed in accordance with the terms of the Debtor's confirmed Chapter 11 Plan.

10. Under section 1142 of the Bankruptcy Code and Federal of Bankruptcy Procedure 3020(d), the Court possesses the authority to implement the provisions of the Plan.

11. Section 1142(b) provides that “[t]he court may direct the debtor and any other necessary party to execute or deliver or to join in the execution or delivery of any instrument required to effect a transfer of property dealt with by a confirmed plan, and to perform any other act, including the satisfaction of any lien, that is necessary for the consummation of the plan.”

12. The Debtor complied with the terms of the confirmed Chapter 11 Plan and advertised and held an auction of the Parkersburg Property. No bids were made at the auction. If a bid of \$200,000 had been made at the auction, the Debtor would have accepted the bid and sold the Parkersburg Property.

13. The Debtor disagrees with the Buyer’s assertion that the Plan does not authorize the Debtor to sell the Parkersburg Property at private sale. However, because the Purchaser is unwilling to close without express authorization by this Court of a private sale, the Debtor is unable to consummate the plan absent entry of an Order approving the sale to Purchaser.

The Sale

14. The transfer of the Parkersburg Property to Purchaser represents an arms’ length transaction and has been negotiated in good faith between the parties. The Debtor moves for the entry of an order approving the Purchase Agreement and finding that Purchaser, as transferee of the Parkersburg Property, is a good faith purchaser within the meaning of 11 U.S.C. §363(m) and, as such, is entitled to the full protections of 11 U.S.C. § 363(m). The Debtor has proceeded in good faith in all respects in connection with this proceeding in that:

- a. Purchaser recognized that the Debtor was free to deal with any other party interested in acquiring the Parkersburg Property;

b. All payments to be made by Purchaser in connection with the transaction have been disclosed; and

c. Purchaser has not violated 11 U.S.C. § 363(n) by any action or inaction.

15. The Debtor moves for entry of an order that, in the absence of a stay of the Court's Order approving the sale (the "Sale Order"), if Purchaser elects to close under the Purchase Agreement at any time after entry of the Sale Order, then, with respect to the Purchase Agreement, Purchaser will be entitled to the protection of § 363(m) if the Sale Order or an authorization contained therein is reversed or modified on appeal.

16. The Debtor further moves for the entry of an order finding that it has established sound business justifications in support of the Sale and a determination that the Purchase Price presents the best opportunity for Debtor's estate to realize the highest distribution possible to all creditors; that the Purchase Price, as approved herein, is the highest and best offer for the Property; that the Purchase Price constitutes full and adequate consideration and reasonably equivalent value for the Property; and that the transfer of the Property on the Closing to Purchaser for the Purchase Price is in the best interest of Debtor's estate, Debtor's creditors, and all parties-in-interest.

Authorizing the Sale of the Property

17. The Debtor, pursuant to 11 U.S.C. §§ 363(f) and 1142(b) and this Court's general equitable powers under 11 U.S.C. § 105(a), moves for an Order that upon the Closing of the Sale, Purchaser will take title to and possession of the Property and that the transfer of the Parkersburg Property will be free and clear of any and all liens, claims, liabilities, interests and encumbrances whatsoever, whether contingent, unliquidated, unmatured or otherwise, and whether of or against the Debtor, the Purchaser, or the Parkersburg Property. All proceeds of sale

will be distributed in accordance with the terms of the Debtor's confirmed Chapter 11 Plan.

18. The Debtor further moves for the entry of an order finding that the Purchaser shall not have any liability or responsibility for any liability or other obligation of the Debtor arising under or related to the Parkersburg Property or any fixtures or personal property thereon.

19. The Debtor also moves for the entry of an order that, effective on the Closing Date, all persons or entities, to the extent allowed by law, are forever prohibited and enjoined from commencing or continuing in any manner any action or other proceeding, whether in law or equity, in any judicial, administrative, arbitral or other proceeding against the Purchaser, its successors and assigns, or the Parkersburg Property, based upon or with respect to any interest, claim, and liability of which the sale of the Parkersburg Property is free and clear under the terms of the Sale.

20. The Debtor further moves for the entry of an order that, subject to the fulfillment of the terms and conditions of the Purchase Agreement, at the Closing the Debtor will sell, transfer, assign and convey to the Purchaser and/or their assigns all of the Debtor's rights, title and interest in, to and under the Parkersburg Property; that the Debtor is authorized, empowered and hereby directed to deliver deeds and other such documentation that may be necessary or requested by the Purchaser in accordance with the terms of the Purchase Agreement to evidence the transfers required herein; and that any personal property or fixtures remaining on the Parkersburg Property as of the Closing Date shall be deemed abandoned.

21. The Debtor further moves for entry of an order that authorizes Cynthia D. Smith to execute all documents on behalf of the Debtor. Cynthia D. Smith is the President of the Debtor and owner of 73% of the outstanding shares of the Debtor.

Approval and Payment of Broker Commission

22. In April 2017, the Debtor contracted with Claire Barth of Berkshire Hathaway to serve as the Debtor's exclusive broker for the sale of the Parkersburg Property at a commission of 6% of the gross proceeds.

23. Ms. Barth has agreed to reduce her commission to 5% of the gross proceeds, which will be shared with the Purchaser's broker.

24. The Debtor is satisfied that Claire Barth and Berkshire Hathaway diligently marketed the Property for sale and actively sought a sale agreement with the Purchaser.

25. The Debtor seeks authority to pay Berkshire Hathaway a commission equal to 5% of the gross proceeds, with a portion of that commission paid to the Purchaser's participating broker.

Distribution of Sale Proceeds

26. The Debtor seeks authority to pay, at closing, real estate taxes, closing costs, and broker commission from the proceeds of sale.

27. The Debtor further seeks authority to distribute all net sale proceeds to Debtor's Counsel, Supple Law Office, PLLC to be disbursed in accordance with the terms of the Debtor's confirmed Chapter 11 Plan, including the payment of U.S. Trustee fees incurred.

Relief Requested

28. That the Court enter an Order, in the form attached to this motion, which:

- a. Approves the Purchase Agreement;
- b. Authorizes the Debtor to sell the Property free and clear of all liens, claims, encumbrances and interests pursuant to 11 U.S.C. §§ 105, 363 and 1142(b);
- c. Approves the Sale of the Property pursuant to 11 U.S.C. §§ 363(b), (f),

(h), (m), 1142(b) and Fed. R. Bankr. P. 6004;

d. Authorizes the payment of the usual and ordinary expenses of the Sale at closing from the proceeds of the Sale;

e. Authorizing the payment of all unpaid real estate taxes assessed against the Property at closing from the proceeds of sale, with current year taxes prorated between buyer and seller.

f. Authorizing the payment of \$10,000.00 at closing from the proceeds of sale, representing 5% broker commission earned.

g. Authorizing the payment of all remaining sale proceeds to Supple Law Office, PLLC to be distributed in accordance with the terms of the Debtor's confirmed Chapter 11 Plan.

h. Authorizing Cynthia D. Smith, on behalf of the Debtor, to execute the deed and any other documents required for closing;

General Glass Company, Incorporated
By Counsel,

/s/ Joe M. Supple
Joe M. Supple (WV Bar #8013)
Supple Law Office, PLLC
801 Viand Street
Point Pleasant, WV 25550
304.675.6249

CERTIFICATE OF SERVICE

I, Joe M. Supple, counsel for the Debtor, certify that on April 24, 2018, a true copy of the Debtor's **MOTION TO SELL REAL ESTATE LOCATED AT 1900 12TH AVENUE PARKERSBURG, WEST VIRGINIA FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS, PURSUANT TO 11 U.S.C. § 363(b), (f) AND (m), § 1142(b), AND § 105, AND FED. R. BANKR. P. 2002, 3020 AND 6004, APPROVING COMPENSATION OF BROKER AND AUTHORIZING DISTRIBUTION OF PROCEEDS OF SALE** was served electronically, via the Clerk's office upon the following:

- David L. Bissett David.L.Bissett@usdoj.gov

- Bradford Paul Bury bbury@flahertylegal.com, kgoffaux-lilly@flahertylegal.com
- Gary L. Call usawvs.ecfbankruptcy@usdoj.gov
- Julia A. Chincheck jchincheck@bowlesrice.com
- Christopher M. Davis chris.davis@wwdhe.com,
lori.deal@wwdhe.com;myra.blair@wwdhe.com
- Thomas H. Ewing tewing@kaycasto.com, nball@kaycasto.com
- Melissa Harclerode harclerode.melissa@pbgc.gov, efile@pbgc.gov
- David M Jecklin djecklin@gbwlaw.net, lhelmick@gbwlaw.net
- James W. Lane jlane@fsblaw.com
- Jeffrey B Shumaker lawhelp@brewerlaw.com
- W. Bradley Sorrells wbs@ramlaw.com
- United States Trustee ustpreion04.ct.ecf@usdoj.gov
- Andrew C. Woofter bky@woofterlaw.com

And by U.S. Mail on April 24, 2018 to:

Dennis M. Brumfield
3301 Jackson Ave.
Point Pleasant, WV 25550

CBRE, Inc.
707 Virginia street, E., Suite 1420
Charleston, WV 25301

Dawn M. Costa
Jennings Sigmond, PC
The Penn Mutual Towers, 16th Floor
Philadelphia, PA 19106

John F. Dascoli
2442 Kanawha Boulevard, East
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Herbert C Fleming
1276 Sugar Grove Road
Morgantown, WV 26501

Fred Holroyd, Esq,
Holroyd & Yost
209 W. Washington Street
South Charleston, WV 25302

James W Lane
Flaherty Sensabaugh Bonasso PLLC
PO Box 3843
Charleston, WV 25338-3843

West Virginia Commercial
PO Box 1692
Charleston, WV 25326

Dunbar Excavation and Snow Removal, LLC
c/o Richard D. Dunbar, Esq.
P O BOX 123
PARKERSBURG, WV, 26102

/s/ Joe M. Supple
Joe M. Supple (WV Bar #8013)
Supple Law Office, PLLC
801 Viand Street
Point Pleasant, WV 25550
304.675.6249



COMMERCIAL REAL ESTATE
CONTRACT OF SALE



1. Agreement between General Glass Co Inc., hereinafter called the Seller,
2.
3. and Dunbar Excavation and Snow Removal LLC and/or assigns, hereinafter called the
4.
5. Purchaser, WITNESSETH:
6.
7. That the Seller agrees to sell and the Purchaser agrees to purchase the premises, with any improvements thereon, described
8.
9. as: 1900 12th Ave., Parkersburg, WV (former General Glass Property)
10.
11. County Tax Plat Book: 5th District; Page 103, Parcel(s) 1,2,3,4,5
12.
13. Exhibit attached: _____
14.
15. Purchase Price: two hundred thousand and no/100 dollars (\$ 200,000.00)
16.
17. Earnest Money Deposit in the sum of \$ 500, payable in cash or ☒ by check to
18.
19. BHHS Great Expectations, listing Broker, shall be held uncashed until acceptance of
20. agreement and then immediately deposited in a non-interest bearing trust account. This deposit shall be held until closing, to be
21. disbursed by the closing or escrow agent or otherwise disbursed pursuant to the terms of the purchase agreement. If no closing
22. takes place, the Broker shall hold the earnest money until both Buyer and Seller execute a written release of said earnest money.
23.
24. Financing: Contract is subject to Buyer making application for a commercial loan within 5 business days and continuing
25. to make every reasonable effort to secure such loan. If buyer is unable to obtain financing this contract shall become null and
26. void and Seller and Buyer shall sign a release authorizing the Broker to return any earnest money deposit to the buyer. Buyer
27. and Seller authorize the review of all closing documents including the closing disclosure by their real estate listing and/or
28. selling agents. Buyer shall secure financing and provide, to the Seller, proof of loan approval within
29. thirty (30) days of acceptance of this agreement.
30. RDD
31.
32.
33.
34. This is a cash sale and buyer will provide verification of funds within NA business days.
35.
36. Authority: Sellers and Purchasers have the right, power and authority to enter into and convey in accordance with the terms and
37. conditions of this agreement, and/or the individual(s) executing this agreement have all requisite authority to bind the
38. respective parties.
39.
40. Seller Warranties: Seller has no knowledge of any (a) condemnation or assessment affecting or contemplated on the property,
41. (b) actions, suits or proceedings pending or threatened against the property, or (c) other facts which would adversely affect
42. the value of the property. Unpaid installments of any special assessments and/or liens against said premises, if any, or made
43. prior to the closing of this transaction, shall be paid by Seller. Seller shall pay all accrued utility bills to the date of delivery
44. of possession.
45.
46. Deed: Seller shall execute and deliver to the Purchaser a deed with covenants of general warranty and free of all liens and
47. encumbrances, which deed shall be duly executed by the Seller at the Seller's expense, in proper form for recording, with
48. sufficient revenue stamps attached so as to convey the fee simple title in said premises. The cost of all state and local transfer
49. taxes and stamps shall be split 50/50 between Buyer and Seller. RDD
50.
51. Pro-rations: Real estate taxes shall be pro-rated to the date of delivery of the deed for the premises. In pro-rating taxes the latest
52. available rates and valuations shall be used and shall be pro-rated on a calendar year basis.
53.
54. Closing: Settlement shall occur and deed delivered to Purchaser on or before April 13, 2018 April 6, 2018 RDD
55.
56. Possession: Seller shall vacate and surrender occupancy ☒ at closing or _____ at noon on (date) NA
57.
58. or NA calendar days after closing and shall be responsible for payment of utilities through such date.

Purchaser (RDD) (____) and Seller (____) (____) have read this page.

59. Risk of Loss: If the property or improvements are damaged by fire or casualty before delivery of the deed and can be restored
60. to substantially the same condition as on the contract date within a period of 60 days thereafter, Seller shall so restore the
61. improvements and the closing date and date of delivery of possession hereinbefore provided shall be extended accordingly. If
62. Seller fails to do so, the Buyer shall have the option of (1) taking the property as is, together with insurance proceeds, if any,
63. or (2) canceling the contract, and all deposits shall be forthwith returned to the Buyer and all parties shall be released of any
64. and all obligations and liability.
65.
66. Title: The Realtor®(s) herein assumes no responsibility as to title, and title examination, if desired, shall be made by Purchaser at
67. Purchaser's expense. If Purchaser's title examination discloses material defects in the title which the Seller is unable to
68.
69. remedy within fourteen (14) days, then Purchaser may rescind this contract. In the event of rescission
70. by reason of title defects, the earnest money deposit, hereinbefore acknowledged, shall be returned to Purchaser.
71.
72. Broker's Purpose: Purchaser and Seller acknowledge that Brokers are not responsible for determining whether toxic, hazardous
73. waste or substance or other undesirable materials are present at or on the property. Neither the Broker nor the Seller makes
74. any warranty with respect to permits, zoning, code compliance, square footage, or room sizes. Buyer should satisfy himself/
75.
76. herself concerning these issues. The parties hereto agree to save BHHS Real Estate Center
77.
78. and BHHS Great Expectations and their agents or employees harmless
79. from any liability resulting from any misrepresentation made by the parties hereto. Parties represent that said broker(s) were
80. the procuring cause of this sale. The Brokers are not parties to this contract and have no authority to bind the parties. It
81. is also understood that the Multiple Listing Service (MLS) and the Parkersburg Area Association of Realtors and Marietta
82. Board of Realtors are not parties to this contract, and that they do not make any warranty with respect to the subject property.
83. If Brokers are participants in an MLS, they are authorized to report the sale, its price, terms and financing to the authorized
84. MLS members.
85.
86. Fair Housing: It is illegal, pursuant to the Ohio Fair Housing Law, Division (H) of Section 4112.02 of the Revised Code, and
87. the Federal Fair Housing Law, 42 U.S.C.A. 3601, as amended, to refuse to sell, transfer, assign, rent, lease, sublease, or
88. finance housing accommodations, refuse to negotiate for the sale or rental of housing accommodations, or otherwise deny or
89. make unavailable housing accommodations because of race, color, religion, sex, familial status as defined in section 4112.01
90. of the Revised Code, ancestry, military status as defined in that section, disability as defined in that section, or national origin,
91. or to so discriminate in advertising the sale or rental of housing, in the financing of housing, or in the provision of real estate
92. brokerage services. It is also illegal, for profit, to induce or attempt to induce a person to sell or rent a dwelling by represen-
93. tations regarding the entry into the neighborhood of a person or persons belonging to one of the protected classes.
94.
95. Special Stipulations: ~~Contract contingent upon no environmental conditions that would require~~ ROD
96. ~~remediation~~
97.
98. Buyer shall have thirty (30) days from the date of acceptance of this contract, to conduct inspections of the Property, including ROD
99. inspections for any environmental issues, as Buyer deems necessary. Buyer shall pay for the cost of all inspections. If the Buyer
100. determines that the Property is unsuitable, in Buyer's sole judgment, for its intended purposes at any time during those thirty (30)
101. days, Buyer may, by written notice to Seller, declare this contract null and void, and Buyer's earnest money returned. After this
102. thirty (30) day Inspection Period, Closing shall be scheduled within fifteen (15) days, and the property should be sold "as-is."
103.
104.
105.
106.
107.
108.
109.
110.
111. Notice: Unless otherwise provided herein, all notices and communications which may be or are required to be given or made
112. by either party in connection herewith shall be in writing and shall be deemed to have been properly given and received the
113. day delivered in person or deposited in the United States Mail, registered or certified return receipt requested, to the address
114. given by the party under his/her signature on this contract, or at such other addresses as specified by written notice delivered
115. in accordance herewith.
116.
117. Investigation: The Parties agree that the Purchaser: ✓ (1) will be given 30 days to conduct a due diligence
118. investigation and inspection of the premises and will rely on such investigation and inspection; or
119. (2) has conducted a due diligence inspection of the premises and is relying on such investigation and inspection.
120.
121. Purchaser (ROD) () and Seller () () have read and understand Lines 117-119.

Purchaser (ROD) () and Seller () () have read this page.

122. Agents: In the event Broker recommends a third party to conduct an inspection for either the Purchaser or the Seller, such
123. recommendation shall not create an agency relationship between the Broker and Purchaser or Seller.
124.

125. Legal: This contract shall be governed by the laws of the State of West Virginia or the State of Ohio depending on where the
126. subject property is located. Upon acceptance of this contract it shall become binding upon and accrue to the benefit of
127. the Purchaser and Seller and their respective heirs, executors, administrators and assigns. It is understood that the within
128. contract contains all the terms and conditions agreed upon between the parties, and that there are no outside conditions,
129. representations, warranties or agreements. Each party hereby acknowledges receipt of a copy of this contract.
130.

131. Time is of the essence in all provisions of this contract.
132.

133. Expiration of Offer: This offer to purchase is open for acceptance until 5 a.m. or ☒ p.m. on the
134. 20th day of February, 20 18. *RDD*

137. Real Estate Fee: In consideration for services, a fee of ~~6%~~ 2.5% shall be payable by the

138. Seller to BHHS Great Expectations (Listing Broker).
139.

141. If applicable: In consideration for services, a fee of ~~3%~~ 2.5% shall be payable by *RDD*

143. Listing Broker to BHHS Real Estate Center (co-broke office) acting as ☒ Buyer Broker or ☐ Subagent.

144. (Total commission is 5%)
145.

146. If applicable: In consideration for services, a fee of NA shall be paid by the
147. Buyer to the Buyer's Broker.
148.

150. *[Signature]* 2/16/18
151. PURCHASER DATE PURCHASER DATE

152. PO Box 123, Parkersburg WV
153. ADDRESS 26102 ADDRESS

158. SELLER DATE SELLER DATE

161. ADDRESS ADDRESS

164. Receipt of Earnest Money: We acknowledge receipt of earnest money deposit in the amount of

165. \$ 500 Check # 1015 or cash _____.
166.

170. Selling Agent *[Signature]* Date Received for Listing Office Date

172. BHHS Real Estate Center BHHS Great Expectations

173. Name of Selling Office Name of Listing Office

174. 304-481-0545 304-444-1370

176. Selling Agent Phone Number Listing Agent Phone Number