

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
At Greenbelt

In Re: :
 :
BADTEC, INC. : Case No. 11-33795-TJC
 : (Chapter 7)
 :
Debtor :

**TRUSTEE’S MOTION TO APPROVE THE SALE OF IMPROVED
REAL ESTATE AND PERSONAL PROPERTY OF
BADTEC, INC. T/A SOUTHERN MEMORIAL GARDENS
FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES,
AND INTERESTS PURSUANT TO 11 U.S.C. §§ 105 and 363(b)**

Gary A. Rosen, the Chapter 7 Trustee for the Estate of Badtec, Inc., by and through his undersigned counsel, and pursuant to 11 U.S.C. §§105 and 363(b) and (f) and Fed.R.Bankr.P. 2002(a)(2) and 6004, files this Motion (the “Sale Motion”) to Approve the Sale of the Improved Real Estate and Personal Property of Badtec, Inc., t/a Southern Memorial Gardens Free and Clear of Liens, Claims, Encumbrances and Interests, and in support thereof states as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this Sale Motion pursuant to 28 U.S.C. §§157 and 1334. Venue of the case in this district is proper pursuant to 28 U.S.C. §§1408 and 1409.

PROCEDURAL BACKGROUND

2. On December 6, 2011, Badtec, Inc., t/a Southern Memorial Gardens (the “Cemetery”), filed a voluntary petition for relief under Chapter 7 of the United States Bankruptcy Code. Gary A. Rosen was appointed as the Chapter 7 Trustee (the “Trustee”).

3. The Cemetery has not been operating since the filing of the bankruptcy petition.

Burials have been allowed by the undersigned Trustee--however, a third party must be brought in to provide burial services.

4. As of May, 2013, the Trustee accepted an offer and entered into an Asset Purchase Agreement (the "Agreement") for the sale of the Cemetery free and clear of any interest therein to Southern Memorial Association. A copy of that Agreement is attached hereto as Exhibit A.

**AUTHORITY TO SELL FREE AND CLEAR OF ALL
LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS**

5. The Bankruptcy Code provides the authority for the Trustee to sell the real and personal property of Southern Memorial Gardens free and clear of all liens, claims, encumbrances and interests.

6. 11 U.S.C. §363(b)(1) provides that the Trustee, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate.

7. 11 U.S.C. §363(f) states that the trustee may sell property under subsection (b) of this section free and clear of any interest in such property or an entity other than the estate, only if (1) applicable non-bankruptcy law permits sale of such property free and clear of such interest; (2) such entity consents; (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property; (4) such interest is in bona fide dispute; or (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

SALE OF SOUTHERN MEMORIAL GARDENS

8. As previously mentioned, the Trustee has entered into an Asset Purchase Agreement for the purchase of the personal property and real property of the Debtor located at 10155 Ward Road, Dunkirk, Maryland 20754, t/a Southern Memorial Gardens to Southern Memorial Association, Inc. (“Purchaser”).

9. The secured debt on the Debtor’s property is as follows: There are currently three loans from Manufacturers Traders Trust Company (the “Lender”) to the Debtor evidenced by notes, deeds of trust and mortgages, and all dated February 28, 2006. Loan I is in the face amount of \$1,400,000.00; Loan II is in the face amount of \$361,000.00, and Loan III is in the face amount of \$50,000.00. The lender has confessed judgments on those notes in the Circuit Court for Calvert County, Maryland at docket number 04-C-11-000646-CJ in the amounts of \$1,610,018.03, \$348,149.45 and \$55,058.06, respectively.

10. In contemplation of the Agreement, the Purchaser previously purchased from the Lender those notes and succeeded to the rights of the judgments under those notes, as well as the deeds of trust on the Real Property via an assignment from the Lender.

11. Pursuant to the Agreement, the Purchaser shall acquire the real property located at 10155 Ward Road, Dunkirk, Maryland 20754 (the “Real Property”), consisting of approximately 30.61 acres of land, along with all equipment consisting of any motor vehicles, furniture, computers, and furnishings located at the Real Property, along with the inventory, including all caskets, urns, vaults, monuments and other inventory, as well as the intangible assets including the name Southern Memorial Gardens and all goodwill associated with that name and the business.

12. The trust funds held on account of perpetual care and preneed sales shall be transferred into appropriate perpetual care trust accounts and preneed trust accounts pursuant to trust agreements to be created to cause the transferred trust funds to be held by the Purchaser.

13. The Purchaser will assume and thereafter in due course provide, all liabilities and obligations arising under the terms of paid-in-full burial contracts; which include (a) all customers listed as having paid-in-full contracts, (b) those customers whose files maintained by the cemetery contain contracts or other evidence that the customer's obligations are paid-in-full, and ©) those customers who can prove to the reasonable satisfaction of the Purchaser that the customer's obligations are paid-in-full. The Purchaser shall act in good faith and fair dealing in making determinations regarding the status of paid-in-full contracts.

14. Furthermore, with respect to liabilities of consumers with preneed burial contracts which are not paid in full, the Purchaser will allow consumers whose contracts are not paid-in-full to enter into new contracts with Purchaser and will give to those consumers a dollar for dollar credit for the amounts previously paid by those customers who can prove to the reasonable satisfaction of the Purchaser that they have made partial payments under a preneed burial contract.

15. Lastly, the Purchaser shall pay the estate the sum of \$25,000.00, which will be applied to trustee fees, which amount is considerably less than the fees allowed by statute, and will pay outstanding property taxes. Inasmuch as all creditor and consumer claims will be satisfied, following settlement and payment of fees, the Trustee will seek the dismissal of the within bankruptcy case.

16. The Trustee believes that the sale of the assets of the Debtor is in the best interest

of all creditors and will provide for the ongoing operation of the cemetery in a professional and responsible manner.

17. Moreover, the State of Maryland Office of Cemetery Oversight has approved the purchase by the Purchaser, which officers currently own and operate other cemeteries in Maryland which are permitted and in good standing with that Office.

18. The Assignee of the Deeds of Trust securing the real property , i.e., the Purchaser, consents to this sale.

WHEREFORE, the Trustee respectfully requests the entry of an order granting this Sale Motion, including approving the Asset Purchase Agreement, approving the sale of Southern Memorial Gardens free and clear of all liens, claims, encumbrances, and interests, and grant such other and further relief as is just and proper.

GARY A. ROSEN, CHARTERED

By /s/ Gary A. Rosen
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13th day of June, 2013, a copy of the foregoing was served electronically to those recipients authorized to receive a Notice of Electronic Filing by the Court; and mailed, first class mail, postage pre-paid, to the U.S. Trustee, 6305 Ivy Lane, Suite 600, Greenbelt, MD 20770.

/s/ Gary A. Rosen _____
Gary A. Rosen