

IN THE COUNTY COURT IN AND
FOR FLAGLER COUNTY, FLORIDA

RICHARD N. BAIATA AS TRUSTEE
OF THE MARYLOU R. BAIATA
REVOCABLE LIVING TRUST
DATED APRIL 9, 1997,

CASE NO.: 2016 CC 000483
DIVISION:

Plaintiff,
v.

John J. Graham a/k/a/ J.J. Graham

Defendant.
_____ /

COMPLAINT FOR EVICTION

Plaintiff, Marylou R. Baiata Revocable Living Trust dated April 9, 1997, by and through the undersigned attorney, hereby brings this Complaint for Eviction against Defendant, John J. Graham a/k/a J.J. Graham pursuant Chapter 83, Florida Statutes, and, in support, states as follows:

JURISDICTION, GENERAL ALLEGATIONS AND PARTIES

1. The property subject to this suit is located at 313 Old Brick Road, Bunnell, Florida 32110, Flagler County.
2. This is an action seeking the eviction of Defendant John J. Graham from the aforementioned property.
3. On July 1, 2014 John J. Graham a/k/a J.J. Graham executed a lease with Marylou R. Baiata, as landlord, to rent the subject property for commercial use. A copy of the lease is attached as Exhibit 1.
4. At the time the subject lease was executed Marylou R. Baiata was trustee of the Mario R. Baiata Revocable Living Trust dated April 9, 1997.

5. On July 16, 2014 Marylou R. Baiata as trustee of the Mario R. Baiata Revocable Living Trust dated April 9, 1997 transferred the subject property to the Marylou R. Baiata Revocable Living Trust dated April 9, 1997. A copy of the Warranty Deed transferring the property as noted above is attached as Exhibit 2.

6. On July 25, 2016 Marylou Baiata passed away and her sons, Richard N. Baiata and Christopher Baiata, assumed the role as co-trustees of the Marylou R. Baiata Revocable Living Trust dated April 9, 1997.

7. The subject lease provides that Defendant shall lease the 6,000 square foot concrete industrial space with 25 foot ceilings located on the property located at 313 Old Brick Road, Bunnell, Florida 32110 (the "premises").

8. Defendant operates Salvo Art on the premises.

COUNT I: EVICTION - FAILURE TO PAY RENT

9. Plaintiff reasserts and alleges all allegations contained in paragraphs 1 through 8 above as if fully stated herein.

10. In exchange for use of the premises, Defendant agreed to pay monthly rent escalating each year during the term of the lease from \$1,500 in the first year, \$2,000 in the second year, and \$2,500 in the third year.

11. Following an initial six (6) month abatement of rent as provided by the lease, Defendant paid rent each month in accordance with the lease terms through September 2016.

12. Mr. Graham failed to pay rent due in October and November 2016 and no rent has been received since September 2016.

13. A three-day notice providing Defendant an opportunity to cure the default was forwarded to tenant in accordance with Florida Statutes on October 17, 2016. A copy of the notice is attached as Exhibit 3.

14. Defendant failed to cure the rent deficiency in accordance with the three (3) day notice and is otherwise in default of the lease for failure to pay rent.

COUNT II: EVICTION – BREACH OF LEASE

15. Plaintiff reasserts and alleges all allegations contained in paragraphs 1 through 8 above as if fully stated herein.

16. Defendant has breached the subject lease by not receiving a proper building permit prior to making significant improvements to the interior of the premises.

17. The lease at issue provides that:

“Tenant will not cause, suffer or permit any liens or encumbrances, nor do any act, which will in any way encumber the title or the landlord in and to the premise or any part thereof....”

18. As a result of Tenant’s unlawful construction the landlord received a Formal Notice of Code Violation from the City of Bunnell. A copy of the notice is attached as Exhibit 4.

19. The city’s notice threatens to impose fines on the Plaintiff and lien the property should the defects noted therein not be timely corrected.

20. To date, upon information and belief, tenant has not cured the Formal Notice of Code Violation issued by the City of Bunnell.

21. Defendant continues to use the unpermitted areas and no Certificate of Occupancy has been issued by the city, thus placing the landlord in danger of liens or encumbrances on the property in violation of the lease.

22. Plaintiff fears that absent an eviction of Defendant it will be fined and liens imposed on the property due to Defendant's breach of lease.

23. Despite demand Defendant has failed to properly insure the premise in violation of the subject lease.

24. The lease at issue provides Defendant shall provide public liability insurance policy providing not less than \$500,000.00 on account of bodily injuries or death of one person and \$1,000,000.00 per accident; plus \$100,000.00 covering interior improvements, contents and damages.

25. Upon information and belief Defendant has not acquired a policy of insurance compliant with the terms of the lease as the declaration page of the policy he has provided landlord provides a \$5,000.00 limit on medical expenses; not \$500,000.00 as required.

26. The term of Defendant's lease confines his activities to the 6,000 square foot industrial space on the premises.

27. Defendant has and continues to violate the terms of the lease by causing a nuisance to other tenants on the property throwing parties or events that extend beyond the warehouse space resulting in Defendant or his guest littering on the property and leaving trash in the display and premises of other tenants on the grounds, and causing a nuisance.

28. Notice of these breaches of lease were provided to Defendant on May 26, 2016, September 9, 2016 and September 29, 2016 and are attached here to as Exhibit 5.

DEMAND FOR ATTORNEY'S FEES AND COSTS

29. Plaintiff has retained the undersigned counsel to represent its interest in this matter and is required to pay a reasonable fee to the same for services.

30. Plaintiff has expended costs in bringing this eviction action.

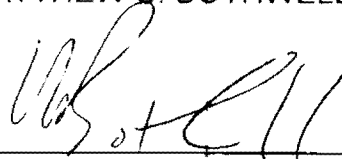
31. In accordance with the subject lease and Florida Statutes Plaintiff is required to recover said fees and costs from Defendant.

WHEREFORE, Plaintiff prays this Honorable Court enter Final Judgment that:

- a. Finds Defendant in breach of the subject lease;
- b. Grants Plaintiff's plea for eviction of Defendant for failure to pay rent returning possession of the property to Plaintiff or, in the alternative;
- c. Grants Plaintiff's plea for eviction of Defendant for breach of lease for failing to adequately protect Plaintiff from liens and encumbrances on the property, returning possession of the property to Plaintiff or, in the alternative;
- d. Grants Plaintiff's plea for eviction of Defendant for breach of lease for failing to provide proper insurance coverage returning possession of the property to Plaintiff or, in the alternative;
- e. Grants Plaintiff's plea for eviction of Defendant for breach of lease by creating an nuisance to co-tenants on the grounds;
- f. Grants Plaintiff attorney's fees and costs associated with bringing this action; and

g. Grants any such additional relief this court deems just and proper.

MATTHEW C. BOTHWELL, P.A.

A handwritten signature in black ink, appearing to read 'M. C. Bothwell', written over a horizontal line.

Matthew C. Bothwell, Esq.

Fla. Bar No.: 574007

310 Third Street

Neptune Beach, Florida 32266

(P): (904) 351-6640

(F): (904) 242-7051

Attorney for the Plaintiff

This lease made this 1st day of July, 2014 by and between **Marylou Baiata – Landlord** first party, hereinafter called "LANDLORD", and **JJ Graham and/or assigns** second party, hereinafter called "TENANT".

PREMISES

- The Landlord, for and in consideration of the rents, covenants, agreements and stipulations hereinafter mentioned, reserved and contained, to be paid, kept and performed by the Tenant, and said Tenant hereby agrees to lease and take upon the terms and conditions which hereinafter appear the 6,000 sq.ft. concrete industrial space with 25 foot ceilings located on the following described property (hereinafter called "PREMISES"), to wit:

Nature Scapes Garden Center
313 Old Brick Road
Bunnell, FL 32110

TERM

- To have and to hold and to take possession of the Premises beginning on July 1, 2014 and for a term of **60 months** from the Rent Commencement Date as that term is defined below. (Option to renew at terms and durations as specified under "special stipulations" contained herein). If for any reason Tenant is unable to fulfill its obligations under this Lease, including, without limitation, the obligation to pay rent as set forth below, Tenant shall assist Landlord in finding a new tenant, and once a new tenant is found, Landlord agrees to release Tenant from its obligations under this lease.

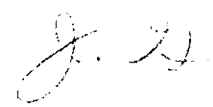
RENTAL

- Landlord and Tenant agree and acknowledge that the Premises is a concrete shell without an HVAC system or any interior improvements to allow the Premises to be used for the purposes set forth in Section 5 below. Tenant agrees to build out the interior improvements and install the HVAC system, at Tenant's expense. In exchange for the extensive interior improvements and installation of the HVAC system, Landlord agrees that Tenant shall not be obligated to pay rent the date that is six (6) months from the first day of the month in which the HVAC system is installed and functioning (the "Rent Commencement Date"). For a period of one year from the Rent Commencement Date, Tenant shall pay Landlord **\$1,500.00** per month as rent. On the one (1) year anniversary of Rent Commencement Date, Tenant shall pay Landlord **\$2,000.00** per month as rent. On the two (2) year anniversary of Rent Commencement Date, Tenant shall pay Landlord **\$2,500.00** per month as rent. On the three (3) year anniversary of Rent Commencement Date, Tenant shall pay Landlord **\$3,000.00** per month as rent. On the four (4) year anniversary of Rent Commencement Date, Tenant shall pay Landlord **\$3,500.00** per month as rent until the lease termination date unless extended as provided herein. All rental payments are exclusive of all state sales taxes and are due in advance no later than the **10th** day of each calendar month during the term hereof. Notwithstanding anything to the contrary in the foregoing, rent shall not be increased above **\$2,500.00** if such increase will be greater than 20% of the Tenant's average monthly net income from the preceding year. In the event the rent increases specified above exceed 20% of the Tenant's average monthly net income from the preceding year then the increase in rent shall be adjusted so the monthly rent for the following year is equal to 20% of the Tenant's average monthly net income from the preceding year. Tenant agrees and provides its further assurance to provide accurate and complete financial records and reports to demonstrate the need to cap any increase in rent as provided above.

UTILITY BILLS

- Tenant shall be responsible for any and all utilities associated with occupancy of said premises, with the exception of water which is included in the monthly rent, as well as phone data requirements, including wireless internet service. Any landline phone / data service, deposits, connection fees, or any other fees associated with landline services shall be the responsibility of the tenant.

EXHIBIT 1



USE OF PREMISES

- Premises shall be used for **Art Retailer / Art Studio** purposes, as well as any use or business function related to the arts so long as any such use will not jeopardize or negatively impact the image and reputation of Landlord, and no other. Premises shall not be used for any illegal purposes or in any manner to create any nuisance or trespass in any manner to violate the insurance coverage on the premises. The premises may not be used for the storage of any hazardous materials or use of any hazardous substances, and/or wastes, toxic and nontoxic pollutants and contaminants as defined by the environmental protection agency.

TAXES / INSURANCE / COMMON AREA MAINTENANCE

- Landlord acknowledges that all real estate taxes, insurance on the building structure (not interior contents) and Common Area Maintenance (CAM) is included in the above rental amount.

DESTRUCTION OF OR DAMAGES TO PREMISES

- If premises are totally destroyed by fire, storm, lightning, earthquake or other casualty, this lease shall terminate as of the date of such destruction, and rental shall be accounted for as between Landlord and Tenant as of the date of destruction. If premises is damaged but not wholly destroyed by such casualties, rental shall abate in such proportion as use of the premises has been destroyed and Landlord shall restore premises to substantially the same condition as before damages as speedily as practicable whereupon full rental shall recommence.

INDEMNIFY

- Tenant agrees to indemnify and save harmless the Landlord against all claims for damages to persons or property by reason of use or occupancy of the leased premises, and all expenses incurred by Landlord because thereof, including attorney's fees and court costs.

ATTORNEY'S FEES AND HOMESTEAD

- If any rent owing under this lease is collected or through an attorney at law, Tenant agrees to pay all reasonable and customary attorney fees of collection. Tenant waives all homestead rights and exemptions, which he may have under any law against any obligation owing under this lease. Tenant hereby assigns to Landlord his homestead and exemption.

RIGHTS CUMULATIVE

- All rights, powers, and privileges conferred hereunder upon parties hereto shall be cumulative but not restrictive to those given by law.

ABANDONMENT OF LEASED PREMISES

- Tenant agrees not to abandon or vacate leased premises during the period of this lease, and agrees to use said premises for the purpose herein leased unit the expiration hereof.

J. S.

REPAIRS BY LANDLORD

- Landlord agrees to keep in good repair the roof, foundations, and exterior walls of the premises, and underground utility pipes outside the exterior walls of the building, except repairs rendered necessary by the negligence of the Tenant, it's agents, employees, or invitees.

REPAIRS BY TENANT

- Tenant shall, throughout the term of this lease and all renewals thereof, at it's expense, maintain in good order and repair the leased premises, including building and other improvements located thereon, except those repairs expressly required to be made by the Landlord. Tenant agrees to return said premises to Landlord at expiration, or prior to termination, of this lease in as good condition and repair as when was first received, natural wear and tear, damage by storm, fire, lightning, earthquake or other casualty alone excepted. In the event that premises are not returned in as good condition, less wear and tear, Tenant agrees to reimburse Landlord for all costs associated to restore unit.

TIME OF ESSENCE

- Time is of the essence of this agreement.

WAIVER RIGHTS

- No failure of Landlord to exercise any power given to Landlord hereunder, or to insist upon strict compliance by Tenant with his obligation hereunder, and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of Landlord's rights to demand exact compliance with the terms hereof.

SERVICE OF NOTICE

- Tenant hereby appoints as his agent to receive service of all dispossessory or distraint proceedings and notices hereunder, and all notices required under this lease, the person in charge of the leased premises at the time, or occupying said premises; and if no such person is in charge of, or occupying said premises, then such service or notice may be made by attaching the same on the main entrance to said premises. A copy of all notices under this lease shall be sent to Tenant's last address, if different from said premises.

DEFINITIONS

- "Landlord" as used in this lease shall include first party, his heirs, representatives, assigns, and successors in title to the premises. "Tenant" shall include second party, his heirs, and representatives, and if this lease shall be validly assigned or sublet, shall include Tenant assignees or subleases, as to premises covered by such assignment or sublease. "Broker" shall include third party, his successors, assigned heirs and representatives. "Landlord", "Tenant" and "Broker" include male and female, singular and plural, corporation, partnership, or individual, as may fit the particular parties.

J. M.

INSPECTIONS

- Landlord and/or his representatives may enter the premises during reasonable business hours to exhibit same with prospective purchasers or tenants, to inspect the premises to see that Tenant is complying with all of its obligations hereunder, and to make any repairs required of Landlord under the terms hereof or repairs or modifications to any adjoining space.

INTERIOR CONTENTS AND LIABILITY INSURANCE

- Tenant agrees to carry, at Tenants expense, throughout the term of this lease, and any extension hereof, public liability insurance covering the premises and Tenants use thereof, together with contractual liability endorsements covering Tenants obligations under the subsection hereof, with companies satisfactory to Landlord with minimums of \$500,000 on account of bodily injuries or death of one person and \$1,000,000 on account of bodily injuries to and death other than one person as a result of any one accident or disaster, and \$100,000 coverage for interior improvements / contents / property damaged in an accident and to **deposit said policy or policies (or certificate thereof) with Landlord prior to the date of any use or occupancy of the premises by Tenant; said policy shall protect Tenant and Landlord**, as their interest may appear. Should Tenant fail to carry such public liability insurance, Landlord may, at his option (but is not required to do so), cause public liability insurance as aforesaid to be issued, and in such event, Tenant agrees to pay the premium for such insurance promptly upon Landlord's demand. Landlord may allow different coverage limitations, and waive the above requirements, by consenting in writing a proposal from Tenant for different coverage limits. **Such liability insurance policy or policies shall bear endorsements to the effect that the insurer agrees to notify Landlord, not less than ten (10) days in advance of modification or cancellation thereof.**

JANITORIAL SERVICES

- Tenant shall be responsible for all routine maintenance, janitorial and cleaning services to the interior of leased premises. Tenant agrees to keep premises clean and in orderly manner at all times.

LIENS AND ENCUMBRANCES

- Tenant will not cause, suffer or permit any liens or encumbrances, nor do any act, which will in any way encumber the title of the Landlord in and to the premises or any part thereof nor will the interest of estate of Landlord be in any way subject to any claim of lien or encumbrance, whether by operation of law or by virtue of any express or implied contract by Tenant.

ENTRY FOR CARDING, ETC.

- Landlord may card premises "FOR RENT" or "FOR SALE" SIXTY (60) DAYS before the termination of this lease. Landlord may enter the premises at reasonable hours to exhibit same to perspective purchasers or tenants and make repairs of premises under terms hereof, or to make repairs to Landlord's adjoining property, if any.

S. J.

GOVERNMENTAL ORDERS

- Tenant agrees, at his own expense, to promptly comply with all requirements of any legally constituted public authority made necessary by reason of Tenants occupancy of said premises. Landlord agrees to promptly comply with any such requirements if not made necessary by reason of Tenants occupancy. It is mutually agreed however, between Landlord and Tenant, that if in order to comply with such requirements, the costs to Landlord or Tenant, as the cause may be, shall exceed a sum equal to one year's rent the Landlord or Tenant who is obligated to comply with such requirement is privileged to terminate this lease by giving written notice of termination to the other party, by registered mail, which termination shall become effective sixty (60) days after giving such notice, and which notice shall eliminate necessity of compliance with such requirement by party giving such notice unless party receiving such notice of termination shall, before termination becomes effective, pay to party giving notice all cost of compliance in excess of one year's rent, or secure payment of said sum in a manner satisfactory to party giving notice.

CONDEMNATION

- If the whole of the leased premises, or such portion thereof, as will make premises unusable for purposes described herein leased, be condemned by any legally constituted authority for any public use or purpose, then in either of said events the term hereby granted shall cease from the date when possession thereof is taken by public authorities, and rental shall be accounted for as between Landlord and tenant as of said date. Such termination, however, shall be without prejudice to the rights of either Landlord or Tenant to recover compensation and damage caused by condemnation from the condemner. It is further understood and agreed that neither the Tenant nor Landlord shall have any rights in award made to the other by any condemnation authority notwithstanding the termination of the lease as herein provided.

ASSIGNMENT & SUBLETTING

- Tenant may sublease portions of the leased premises to others provided such sublease's operation is a part of the general operation of the Tenant and under the supervision and control of Tenant, and provided such operation is within the purposes for which said premises shall be used. Except, as provided in proceeding sentence, Tenant shall not, without Landlord's written consent endorsed herein, assign this lease or any interest hereunder, or sublet premises or any part thereof, or permit the use of premises by any other party other than Tenant. Consent to any assignment or sublease shall not destroy this provision, and all later assignments or subleases shall be made likewise on the prior written consent of the Landlord. Assignee of Tenant, at option of Landlord, shall become directly liable to Landlord for all obligations of Tenant hereunder, but no sublease or assignment by tenant shall relieve Tenant of any liability hereunder.

REMOVAL OF FIXTURES

- Tenant may (if not in default hereunder), prior to the expiration of this lease, or any

J. G.

extension thereof, remove all fixtures and equipment which tenant has placed in premises, provided Tenant repairs all damage to premises caused by such removal.

EXTERIOR SIGNS

- Tenant will have the right to install signage upon the entry door glass window with the written consent of the Landlord. No other signage shall be placed on or around the leased premises by Tenant without the written consent of the Landlord. Tenant shall be responsible to Landlord for any damage caused by installation, use, or maintenance of said signs, and Tenant agrees upon removal of said signs to repair all damages incidental to such removal.

EFFECT TERMINATION OF LEASE

- No termination of this lease prior to the normal ending thereof, by lapse of time otherwise, shall affect Landlord's right to collect rent for the period to terminate thereof.

MORTGAGEE'S RIGHTS

- Tenant's rights shall be subject to any bona fide mortgage or deed to secure debt which now or may hereafter be placed upon the premises by Landlord.

NO ESTATE IN LAND

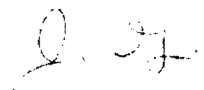
- This Contract shall create the relationship of Landlord and Tenant between the parties hereto; no estate shall pass out of Landlord. Tenant has only a usufruct not subject to any levy and sale, not assignable by Tenant except by Landlord's consent.

MISCELLANEOUS

- **A.** Except as expressly herein provided, any amount due to Landlord or Tenant not paid when due shall earn interest at the highest rate permitted by law, but in no event to exceed fifteen (15%) percent per annum, from the date due. Payment of such interest shall not excuse or cure any default by Tenant under this lease.

B. If any term or provision of this lease is to any extent held invalid or unenforceable, the remaining terms and provisions of this lease will be unaffected thereby, but each term and provision of this lease will be enforceable to the fullest extent permitted by law. No remedy or election hereunder shall be deemed exclusive, but shall wherever possible, be cumulative with all other remedies at law or in equity. Each provision of this lease shall be deemed both a covenant and a condition.

C. If a Tenant is a Corporation, each individual executing this lease on behalf of said Corporation represents and warrants that he or she is duly authorized to execute and deliver this lease on behalf of said Corporation in accordance with a duly adopted resolution of the board of directors or said Corporation or in accordance with the bylaws of said corporation in accordance with its terms. Upon request, Tenant shall furnish Landlord with a certified copy of a duly adopted resolution of the board of directors of Tenant with respect to the due authorization to execute and deliver this lease.



D. This lease shall be executed in two (2) counterparts, each of which will be deemed an original. Provisions inserted herein and affixed thereto shall be invalid unless appearing in all originals. This lease may only be amended in writing executed by Landlord and Tenant.

E. Submission of this instrument for examination does not constitute a reservation of or an option for the premises. The instrument becomes effective as a lease only upon execution and delivery by both Landlord and Tenant.

- No receipt of acceptance by Landlord of less than the rent due from time to time hereunder shall be deemed to be other than a partial payment on account for any due and unpaid stipulated rent; no endorsement or statement on any check or any letter or other writing accompanying any check or payment of rent to Landlord shall be deemed an accord and satisfaction, and landlord may accept and negotiate such check or payment without prejudice to Landlord's right to (a) recover the remaining balance of such unpaid rent or (b) pursue any other remedy provided in this lease.
- Landlord shall not by the execution of this lease in any way or for any purpose, become (a) a partner of Tenant in the conduct of Tenant's business or otherwise, or (b) a joint venture or a member of a joint enterprise with Tenant.

**THE FOLLOWING SPECIAL STIPULATIONS, IF ANY, ARE CONTINUED
HEREAFTER IN THIS CONTRACT, AND IF CONFLICTING WITH THE
PRINTED MATTER CONTAINED HEREIN, SHALL CONTROL:**

- Any lease payment received after the 15th day of the month due shall include a 10% late fee. All lease payments shall be made to:

**Mary Lou Baiata
313 Old Brick Road
Bunnell, FL 32110**

- Tenant is responsible for installation and cost of their own phone and computer lines. Tenant agrees to keep premises in a clean and orderly manner.
- All checks returned to Landlord by Tenant's bank shall be subject to a charge of \$40.00. The second returned check on a Tenant's account is grounds for a cancellation of Tenant's lease.
- Tenant's address for the purpose of any notice requires hereunder is:

JJ Graham
313 Old Brick Road
Bunnell, FL 32110

Q. 50

- Tenant shall be granted the option to renew the Lease beginning July 1, 2019 for an additional 5 years at a monthly rate of \$3605 for year one and increasing 3% per year thereafter. All other conditions will remain constant with the original lease agreement. Tenant shall provide written notice of Tenant's exercise of such renewal option not less than 90 days prior to the expiration date of the lease.
- Garbage collection is a shared Tenant responsibility paid and managed by Landlord. Tenant agrees to use services on a shared basis with other tenants, not proportionately abuse such services, and agrees to a special tenant assessment if Landlord is required to pay additional fees for garbage collection.
- Any Exhibits attached hereto are made a part hereof, should these Exhibits conflict with any of the foregoing provisions, said Exhibits shall control.
- In consideration for the extensive improvements Tenant intends to make to the leased premises and Tenant's other investment therein the Landlord agrees not to lease the leased premises to a tenant that intends to use the leased premises for purposes and uses substantially similar to Tenants purposes and uses, as specified above, for a period of five (5) years after termination of this lease. This provision will not apply if Landlord is forced to evict tenant as a result of breach of this Lease.
- Landlord hereby grants Tenant a right of first refusal to purchase the lease premises for the term of this lease, and any renewals thereof. Within five (5) days of Landlord receiving a written offer from a third party to purchase the leased premises Landlord shall provide a copy to Tenant. Tenant shall have thirty (30) days from receipt of the offer to exercise its right of first refusal and accept or reject the same.

Tenant acknowledges that Tenant has read and understands the terms of this Lease and has received a copy of it.

THIS LEASE CONTAINS THE ENTIRE AGREEMENT OF THE PARTIES HERETO AND NO REPRESENTATION INDUCEMENTS, PROMISES OR AGREEMENTS, ORAL OR OTHERWISE, BETWEEN THE PARTIES. NOT EMBODIED HEREIN, SHALL BE OF ANY FORCE OR EFFECT. IN EFFECT WHEREOF, THE PARTIES HEREIN HAVE HEREUNTO SET THEIR HANDS AND SEALS. ACCEPTANCE:

The above agreement is hereby accepted on this 1 day of July, 2014.

TENANT:

LANDLORD: Marylou Baiata

TENANT: [Signature] LANDLORD:

TITLE: Salvo Act

DATE: 1 July 2014 DATE:

PERSONAL GAURANTOR: [Signature]
INDIVIDUALLY, JOINTLY, AND SEVERLY

DATE: 1 July 2014

APPROVED: [Signature]
[Signature]

PREPARED BY AND RETURN TO:

Dennis K. Bayer, Esq.
109 South 6th Street
Flagler Beach, FL 32136

This Deed has been prepared by Grantor's request
without examination or legal opinion of title.

PARCEL ID No.: 12-12-30-0650-000A0-0092 and 12-12-30-0650-00A0-0093

WARRANTY DEED

THIS WARRANTY DEED, executed this 16th day of July, 2014 by MARYLOU R. BAIATA, as Trustee of the MARIO R. BAIATA REVOCABLE LIVING TRUST dated April 9, 1997, as amended from time to time, whose address is 1411 S. Daytona Avenue, Flagler Beach, FL 32136, GRANTOR to MARYLOU R. BAIATA, as Trustee of the MARYLOU R. BAIATA REVOCABLE LIVING TRUST DATED APRIL 9, 1997 whose mailing address is 1411 S. Daytona Avenue, Flagler Beach, FL 32136, GRANTEE.

WITNESSETH, that the said Grantor, for and in consideration of the sum of \$10.00 and other valuable considerations, in hand paid by the said Grantee, the receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the Grantee, the following described lot, piece or parcel land, situate, lying and being in the County of Flagler, State of Florida, to wit:

Parcel 1: The East ½ of the East ½ of the South ½ of Tract 9, Block A, Section 12, Township 12 South, Range 30 East, Bunnell Development Company Subdivision, according to the map or plat thereof as recorded in Plat Book 1, Page 1 of the Public Records of Flagler County, Florida

Parcel 2: The West ½ of the East ½ of the South ½ of Tract 9, Block A, Section 12, Township 12 South, Range 30 East, Bunnell Development Company Subdivision, according to the map or plat thereof as recorded in Plat Book 1, Page 2, Public Records of Flagler County, Florida.

and the Grantor hereby fully warrants the title to this land and will defend the same against the lawful claims of all persons whomsoever.

Grantor warrants that at the time of this conveyance, the subject property is not the Grantor's homestead within the meaning set forth in the constitution of the state of Florida.

Subject to taxes for the year 2014 and subsequent years, restrictions, covenants, easements, dedications, reservations, resolutions and conditions of record, if any.

Marylou R. Baiata as Trustee shall have the independent power and authority to protect, conserve, sell, lease, encumber or otherwise manage and dispose of the real property conveyed by this deed.

EXHIBIT 2

If Marylou R. Baiata cannot continue to serve as Trustee, then the Successor Trustees shall be Grantor's sons RICHARD NICHOLAS BAIATA and CHRISTOPHER PATRICK BAIATA.

All Successor Trustees are hereby granted the power to protect, conserve, sell, lease, encumber, or otherwise manage and dispose of the real property described in this deed.

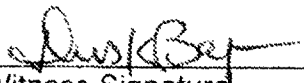
The powers of the Trustee and all Successor Trustees shall extend to any and all rights the Grantor possesses in the above-described real property; any deed, mortgage, or other instrument executed by the Trustee shall convey all rights or interests of the Grantor including homestead, and the Trustee is appointed as the attorney-in-fact for the Grantor to carry out this intent; which appointment shall be durable and shall not be affected the incapacity of the Grantor.

No person shall deal with a Successor Trustee until one or more of the following have been received by that person or placed of record in the aforementioned county:

- A. The written resignation of the prior Trustee sworn to and acknowledged before a notary public.
- B. A certified death certificate of the prior Trustee.
- C. The order of a court of competent jurisdiction adjudicating the prior Trustee incompetent or removing that Trustee for any reason.
- D. The written certificate of two physicians currently practicing medicine stating that the Trustee is unable to manage his or her own affairs or is physically or mentally incapable of discharging the duties of Trustee.
- E. The written removal of a Successor Trustee and/or the appointment of an additional Successor Trustee by Marylou R. Baiata, sworn to and acknowledged before a notary public.

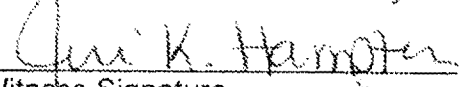
IN WITNESS WHEREOF, the Grantor has hereto set her hand and seal the day and year first above written.

SIGNED IN THE PRESENCE OF THE
FOLLOWING WITNESSES:



Witness Signature
Dennis K Bayer

Witness Printed Name



Witness Signature
Jiri K. Hampton

Witness Printed Name

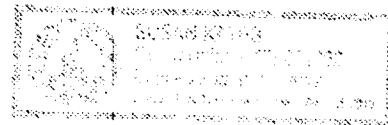


MARYLOU R. BAIATA, Trustee of the
Mario R. Baiata Revocable Living Trust
dated April 9, 1997

STATE OF FLORIDA
COUNTY OF FLAGLER

Sworn to and subscribed before me on July 16, 2014 by
MARYLOU R. BAIATA who is personally known to me ~~or who produced~~
 as identification.

Susan Kates
Notary Public, State of Florida
Printed Name: Susan Kates
My commission expires: 3-26-17



MATTHEW C. BOTHWELL, P.A.

ATTORNEY AND COUNSELOR AT LAW

Three-day Notice to Tenant Demand for Payment or Possession

Florida Statutes 83.05

TO: Mr. John J. Graham
Salvo Art
313 Old Brick Road
Bunnell, FL 32110

FROM: Marylou R. Baiata Revocable Living Trust
c/o Matthew C. Bothwell, Esq.

DATE: October 17, 2016

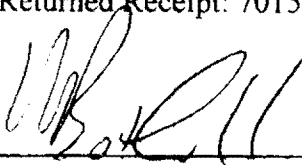
Please take notice that the law firm of Matthew C. Bothwell, P.A. has been retained by the Marylou R. Baiata Revocable Living Trust as assignee of the lease agreement entered between you and Marylou Baiata effective on or about July 1, 2014 for the property located at 313 Old Brick Road, Bunnell, Florida 32110. You are hereby notified that pursuant to the aforementioned lease you are indebted to the trust in the sum of \$2,500.00 in past due rent plus an additional \$250.00 late fees resulting from your use of the premises located at Old Brick Road, Bunnell, Florida 32110, now occupied by you. The trust demands payment of the rent plus late fee in full or possession of the premises within three (3) days (excluding Saturday, Sunday, and legal holidays) from the date of delivery of this notice, to wit: on or before the following date: **Thursday, October 20, 2016.**



Matthew C. Bothwell, Esq.
Attorney for the Marylou R. Baiata Revocable
Living Trust

CERTIFICATE OF SERVICE

I hereby certify that a copy of the following notice was served by hand delivery, First Class Mail and Certified mail at 313 Old Brick Road, Bunnell, Florida 32110 upon the above named tenants on this 17th day of October, 2016. Returned Receipt: 70153010000227472733.



Matthew C. Bothwell, Esq.

EXHIBIT 3

THIS IS A COMMUNICATION FROM A DEBT COLLECTOR

MATTHEW C. BOTHWELL, P.A.

ATTORNEY AND COUNSELOR AT LAW

Three-day Notice to Tenant Demand for Payment or Possession

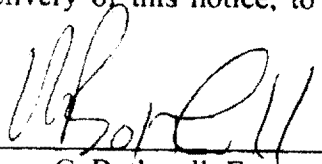
Florida Statutes 83.05

TO: Mr. John J. Graham
Salvo Art
313 Old Brick Road
Bunnell, FL 32110

FROM: Marylou R. Baiata Revocable Living Trust
c/o Matthew C. Bothwell, Esq.

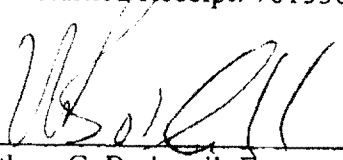
DATE: October 17, 2016

Please take notice that the law firm of Matthew C. Bothwell, P.A. has been retained by the Marylou R. Baiata Revocable Living Trust as assignee of the lease agreement entered between you and Marylou Baiata effective on or about July 1, 2014 for the property located at 313 Old Brick Road, Bunnell, Florida 32110. You are hereby notified that pursuant to the aforementioned lease you are indebted to the trust in the sum of \$2,500.00 in past due rent plus an additional \$250.00 late fees resulting from your use of the premises located at Old Brick Road, Bunnell, Florida 32110, now occupied by you. The trust demands payment of the rent plus late fee in full or possession of the premises within three (3) days (excluding Saturday, Sunday, and legal holidays) from the date of delivery of this notice, to wit: on or before the following date: **Thursday, October 20, 2016.**


Matthew C. Bothwell, Esq.
Attorney for the Marylou R. Baiata Revocable
Living Trust

CERTIFICATE OF SERVICE

I hereby certify that a copy of the following notice was served by hand delivery, First Class Mail and Certified mail at 313 Old Brick Road, Bunnell, Florida 32110 upon the above named tenants on this 17th day of October, 2016. Returned Receipt: 70153010000227472733.

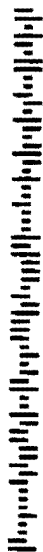

Matthew C. Bothwell, Esq.

THIS IS A COMMUNICATION FROM A DEBT COLLECTOR

MATTHEW C. BOTHWELL, P.A.
310 THIRD ST.
NEPTUNE BEACH, FL 32266

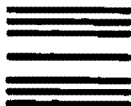


7015 3010 0002 2747 2733

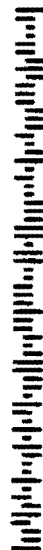


Mr John J. Graham
Salvo Art
313 Old Brick Rd
Bunnell FL 32110-6360

062S0009121935
\$6.465
US POSTAGE
FIRST-CLASS
FROM 32266
OCT 17 2016
stamps.com

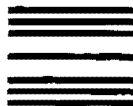


MATTHEW C. BOTHWELL, P.A.
310 THIRD ST.
NEPTUNE BEACH, FL 32266



Mr John J. Graham
Salvo Art
313 Old Brick Rd
Bunnell FL 32110-6360

062S0009121935
\$0.465
US POSTAGE
FIRST-CLASS
FROM 32266
OCT 17 2016
stamps.com



1. Addressee
 Addressee Name
 Addressee Address
 Addressee City, State, ZIP+4®
 Addressee Telephone (Area Code and Number)

2. Addressee Number
 (Required from service label)
 PS Form 3811, July 2013

3. Return Address
 Return Address Name
 Return Address Address
 Return Address City, State, ZIP+4®
 Return Address Telephone (Area Code and Number)

4. Signature
 Signature
 Date

5. Recipient by (Printed Name)
 Recipient by (Printed Name)
 Recipient by (Printed Name)

6. Is delivery address different from item 1?
 If YES, enter delivery address below:
 Delivery Address Name
 Delivery Address Address
 Delivery Address City, State, ZIP+4®
 Delivery Address Telephone (Area Code and Number)

7. Priority Mail Express®
☐ Priority Mail Express®
☐ Return Receipt for Merchandise
☐ Certified Mail
☐ Registered Mail
☐ Signature Required
☐ Signature Restricted Delivery

8. Certified Mail Fee
 Certified Mail Fee \$
 Extra Services & Fees (check box, add fee as appropriate)
☐ Return Receipt (hardcopy) \$
☐ Return Receipt (electronic) \$
☐ Certified Mail Restricted Delivery \$
☐ Adult Signature Required \$
☐ Adult Signature Restricted Delivery \$
 Postage \$
 Total Postage and Fees \$

9. Sent To
 Sent To
 Street and Apt. No., or P.O. Box
 City, State, ZIP+4®

10. Postmark
 Postmark Here

11. PS Form 3800, April 2015 PSN 7530-02-000-9047
 See Reverse for Instructions

U.S. Postal Service
CERTIFIED MAIL® RECEIPT
 Domestic Mail Only

For delivery information, visit our website at www.usps.com

OFFICIAL USE

Certified Mail Fee
 Certified Mail Fee \$
 Extra Services & Fees (check box, add fee as appropriate)
☐ Return Receipt (hardcopy) \$
☐ Return Receipt (electronic) \$
☐ Certified Mail Restricted Delivery \$
☐ Adult Signature Required \$
☐ Adult Signature Restricted Delivery \$
 Postage \$
 Total Postage and Fees \$

Sent To
 Sent To
 Street and Apt. No., or P.O. Box
 City, State, ZIP+4®

Postmark
 Postmark Here

PS Form 3800, April 2015 PSN 7530-02-000-9047
 See Reverse for Instructions

- Complete items 1 through 8. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. J. Graham
313 CHURCH RD
DUNNELL, FL 32110

A. Signature X J. Graham		<input type="checkbox"/> Agent <input type="checkbox"/> Addressee
B. Received by (Printed Name)		C. Date of Delivery
D. Is delivery address different from item 1? <input type="checkbox"/> Yes If yes, enter delivery address below: <input type="checkbox"/> No		
3. Special Mail		
<input checked="" type="checkbox"/> Certified Mail	<input type="checkbox"/> Priority Mail Express™	
<input type="checkbox"/> Registered	<input type="checkbox"/> Return Receipt for Merchandise	
<input type="checkbox"/> Insured Mail	<input type="checkbox"/> Collect on Delivery	
4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes		

7015 3010 0002 2747 2733

2. Article Number
(Transfer from service label)

PS Form 3811, July 2013

Domestic Return Receipt



FORMAL NOTIFICATION OF CODE VIOLATION

August 24, 2016 at 3:08 PM

Case number 16-050

TO: Marylou R. Baiata
Trustee
469 Atlantic Blvd. STE 8
Atlantic Beach, FL 32233

VIA certified mail return receipt: 7013 3020 0001 2839 4294

THIS LETTER IS TO INFORM YOU THAT AS OF 8/24/2016 AT 7:30 AM YOU ARE IN VIOLATION OF CODE(S):

Bunnell Land Development Code

Sec. 6-31. - Adoption.

The Florida Building Code - 2004 edition with appendices and local amendments; Florida Building Code - 2001 edition, Chapter 1 and appendices, as set out in section 6-33 of this article; Standard Plumbing Code - 1994 edition with appendices A, B, C, D, E, F, G, I, and J; Standard Gas Code - 1994 edition with appendices A, D, and E; Standard Mechanical Code - 1994 edition with appendices A and C; Standard Swimming Pool Code - 1994 edition with local amendments; Standard Fire Prevention Code - 1994 edition; Life Safety Code - 1974 edition with local amendments are adopted by reference. The local amendments are found elsewhere in this article and are hereby adopted by reference to apply to the incorporated area of the city. A copy of the codes shall be filed in the office of the city clerk and shall be available for public inspection during regular hours.

Being the Owner/Tenant of said following property, described as:
313 Old Brick Rd., City of Bunnell, County of Flagler, State of Florida
Parcel ID number 12-12-30-0650-000A0-0092

YOU ARE HEREBY DIRECTED TO CORRECT ALL THE DESCRIBED VIOLATIONS WITHIN 30 DAYS OF RECEIPT OF THIS LETTER.


TO BECOME IN COMPLIANCE YOU MUST:

- Have a licensed contractor submit a building permit application request and all necessary drawings and/or supporting documentation for the steps, railing and room projects to the City of Bunnell Building Department located at 201 W. Moody Blvd., Bunnell, FL 32110. The contractor must have a current City of Bunnell Business Tax Receipt (BTR).
- Or remove the steps, railing and room projects to include any unpermitted work completed.

If these violations are not corrected as indicated above, it will be assumed you do not intend to comply with this LEGAL ORDER from CITY CODE ENFORCEMENT AUTHORITIES.

This case shall then move forward to the CITY of BUNNELL Code Enforcement Board for further action. The Code Enforcement Board is empowered to levy a fine of UP TO \$250.00 (Two hundred and fifty dollars) PER DAY, PER VIOLATION, for a first violation. OR UP TO \$500.00 (Five hundred dollars) PER DAY, PER VIOLATION, if it is a repeat violation.

Further: The City of Bunnell has the authority to apply a lien against your real estate in order to collect such fines imposed and not paid. It is your responsibility to contact the Code Enforcement Officer at 386-437-7516 for inspection once in compliance.



**Mick Cuthbertson
Code Enforcement Officer
City of Bunnell
PO Box 756
Bunnell, FL 32110**

May 26, 2016

Richard N. Baiata
469 Atlantic Blvd, STE 8
Atlantic Beach, FL 32233

J.J. Graham
Salvo Art
313 Old Brick Road
Bunnell, Florida 32110

Re: Lease of Premises, 313 Old Brick Road, Bunnell, Florida

NOTICE OF DEFAULT

Dear J.J.:

I am writing on behalf of the Marylou Baiata Irrevocable Trust, the Landlord for the leased premises at 313 Old Brick Road, Bunnell. As you know, my brother Chris and I are co-trustees and executors of Marylou's estate. We have been informed by the City of Bunnell that you have built a staircase and second floor studio space in violation of local building codes and without the proper permits. It is my understanding that you were notified in February 2016 of the illegal and unsafe construction and given an opportunity to come into compliance, which you have failed to do.

At this time, we consider you in breach of the lease agreement signed on July 1, 2014, for failing to abide by several sections of the agreement and this letter is your notice of default.

The terms of the lease provide, under the Use of Premises clause, that the premises "shall not be used for any illegal purposes or in any manner to create any nuisance or trespass in any manner to violate the insurance coverage on the premises." Moreover, it states that your use "will not jeopardize or negatively impact the image and reputation of the Landlord."

The illegal and unsafe construction is in violation of Bunnell building codes and negatively impacts the image and reputation of us and NatureScapes. In addition, the illegal use and unsafe construction violates the insurance coverage on the premises, and creates a liability risk.

Furthermore, the Governmental Orders section of the lease requires that you "promptly comply with all requirements of any legally constituted public authority" which you failed to do when you constructed the stairs and second floor space without a permit. You further breached this section when you ignored the building inspector's directive to remove the illegal construction and file for a building permit. In the event that the City of Bunnell levies fines for the illegal construction, we are in jeopardy of having a lien on the premises, which is another breach of the lease agreement – see the Liens and Encumbrances section.

EXHIBIT 5

As you should know, the lease provides that you, as the Tenant, have indemnified the Landlord against all claims for damage by reason of your use or occupancy. Furthermore, you indemnify us for all expenses incurred including attorney's and court fees. This includes, by the way, the cost that we have incurred to consult with legal counsel regarding this matter and will include any and all legal costs incurred if you choose to defend this action and do not prevail. Since you are factually in violation of the lease, it seems very unlikely that you would prevail in any such defense.

Finally, you are required to return the premises to as good a condition as when you first received it. In the event that you fail to do so, you are required to reimburse the Landlord for all costs associated with restoring the unit.

At this time, we believe that we are within our rights to seek your eviction from the premises and recover all costs allowed by the lease, including any restoration/repair costs, any fines imposed by the City, and attorney's fees.

We are willing to consider allowing you to continue to lease the premises going forward, but only under a new lease and only if you immediately commence an effort to obtain proper permits for the illegal construction and obtain such permits before June 30, 2016. If you are interested in negotiating a new lease, please inform me in writing no later than June 7, 2016. Absent such notice, we will contact our attorney and commence eviction proceedings if necessary. In either case, we will also expect you to pay any and all of our legal costs incurred in connection with this matter and any fines imposed by the City.

We regret that the situation has come to this, as Marylou had high hopes for a fruitful collaboration between NatureScapes and Salvo Art, and we wanted to see her vision fulfilled. But at this time, you have put that vision in jeopardy, and left us with few good options. We look forward to hearing back from you so that we can resolve this unfortunate situation as quickly as possible.

Sincerely,



R. Nicholas Barata
Executor and Co-Trustee

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

JJ Graham
Salvo, Ar +
313 Old Birch Rd
Bunnell, FL 32110



9590 9402 1602 5362 2344 35

2. Article Number (Transfer from service label)

7015 3430 0000 1374 3948

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? If YES, enter delivery address below:

☐ Yes☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery/Restricted Delivery
- ☐ Mail Restricted Delivery (over \$500)

☐ Priority Mail Express®☐ Registered Mail™☐ Registered Mail Restricted Delivery☐ Return Receipt for Merchandise☐ Signature Confirmation™☐ Signature Confirmation Restricted Delivery

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

U.S. Postal Service™

CERTIFIED MAIL® RECEIPT

Domestic Mail Only

For delivery information, visit our website at www.usps.com

BUNNELL, FL 32110

Certified Mail Fee

\$3.50

Extra Services & Fees (check box, add fee if appropriate)

- ☐ Return Receipt (hardcopy) \$
- ☐ Return Receipt (electronic) \$
- ☐ Certified Mail Restricted Delivery \$
- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

Total Postage and Fees

Sent To

Street and Apt. No., or P.O. Box No.

City, State, ZIP+4®

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

Postmark

MAY 2 2016

MATTHEW C. BOTHWELL, P.A.

ATTORNEY AND COUNSELOR AT LAW

September 9, 2016

Via Certified Mail, First Class Mail
Electronic Mail and Posted Delivery

Mr. John J. Graham
313 Old Brick Road
Bunnell, FL 32110

Re: Breach of Lease/Notice of Default
313 Old Brick Road

Dear Mr. Graham:

Please be advised that the undersigned counsel has been retained by the Marylou R. Baiata Revocable Living Trust relative to your occupancy of the property located at 313 Old Brick Road, Bunnell, Florida 32110. On or about July 1, 2014 you personally executed a commercial lease agreement to rent a portion of the subject property for use as an Art Retailer / Art Studio. Said lease was signed on behalf of the trust by Ms. Marylou Baiata who was a stage 5 cancer patient taking powerful pain killers and various other medication at the time of signing. Ms. Baiata passed away twenty-four (24) days after execution of the lease. Notwithstanding the foregoing, even if the lease were found to be valid, by entering into said lease you made certain promises to the property owner that have been broken by you resulting in your breach of lease and this notice of default.

You have previously been placed on notice by the property owner numerous times both in writing and otherwise that you constructed certain improvements to the leased property in violation of the City of Bunnell Land Development Code and Florida's Building Code. Among other notices, the Lessor brought these violations to your attention in its letter dated May 26, 2016 and gave you until June 30, 2016 to cure the violations. Despite repeated notice you have failed to cure said breach resulting in the City of Bunnell issuing a Formal Notice of Code Violation on August 24, 2016. Enclosed please find a copy of the code violation notice issued by the City of Bunnell. As indicated in the notice, your failure to cure the defects identified therein may result in the levy of fines up to \$500.00 per day against the property and its owners. The subject lease provides in pertinent part that:

"Tenant shall not cause, suffer or permit any liens or encumbrances, nor do any act, which will in any way encumber the title of the Landlord in and to the premise or any part thereof nor will the interest of the estate of Landlord be in any way subject to any claim of lien or encumbrance..."

The lease further provides that your use of the property "will not jeopardize or negatively impact the image and reputation of Landlord..." and that the "premises shall not be used for any illegal purpose."

Page 1 of 2

The codes violation identified by the City of Bunnell's Formal Notice of Code Violation subject the property and its owners to lien or encumbrances and may further encumber the owner's title to the property. As such, you are in breach of the terms of the subject lease. To cure said breach you must provide the undersigned proof of your performing all acts necessary to become in compliance with the Bunnell Land Development Code as identified by the City of Bunnell's Formal Notice of Code Violation immediately and certainly no later than 10 days from the date of this letter. Your failure to cure said defects timely will result in irreparable harm to the property owner and will force it to seek your eviction from the property.

The subject lease also requires that you carry a policy of insurance on the property as outlined in the paragraph titled Interior Contents and Liability Insurance. As such, within fifteen (15) days of the date of the date of this letter, please provide the undersigned proof that you have obtained required insurance policies for the property including, but not necessary limited to, a policy declarations page reflecting coverage minimums of \$500,000.00 for bodily injury or death per person and \$1,000,000.00 per accident; as well as \$100,000.00 coverage for interior improvements / contents / property damage.

I would also ask that you please provide a list of names, addresses and contact phone numbers for all parties to whom you sublease space in the leased premises within fifteen (15) days of this letter.

Finally, it has come to my attention that your occupancy of the property has often extended beyond the 6000 sq. ft. concrete industrial space with 25 foot ceilings provided for your use under the lease. The landlord has also received complaints from other occupants of trash, alcohol and other debris on the property left outside of your leased premises by you or your patrons, creating a nuisance and possibly subjecting the owner to legal penalties. Please accept this notice that your use of the property is limited to the aforementioned industrial space and should be contained therein. Further, you are responsible for the actions of your guests on the property and must ensure that they are not a nuisance to other occupants and do not litter on the property. Further failure to provide such protections will constitute a breach of lease and subject you to eviction.

Thank you for your understanding and I trust all matters addressed above will be resolved quickly and in an amicable fashion. Should you have any questions, please do not hesitate to contact me. Nothing herein should be construed as a waiver of any and all rights or defenses of the landlord, all such rights and defenses being expressly reserved.

Respectfully,



Matthew C. Bothwell, Esq.

Enclosure
cc. Nick Baiata



FORMAL NOTIFICATION OF CODE VIOLATION

August 24, 2016 at 3:08 PM

Case number 16-050

TO: Marylou R. Baiata
Trustee
469 Atlantic Blvd. STE 8
Atlantic Beach, FL 32233

VIA certified mail return receipt: 7013 3020 0001 2839 4294

THIS LETTER IS TO INFORM YOU THAT AS OF 8/24/2016 AT 7:30 AM YOU ARE IN VIOLATION OF CODE(S):

Bunnell Land Development Code

Sec. 6-31. - Adoption.

The Florida Building Code - 2004 edition, with appendices and local amendments; Florida Building Code—2001 edition, Chapter 1 and appendices, as set out in section 6-33 of this article; Standard Plumbing Code- 1994 edition with appendices A, B, C, D, E, F, G, I, and J; Standard Gas Code - 1994 edition with appendices A, D, and E; Standard Mechanical Code - 1994 edition with appendices A and C; Standard Swimming Pool Code - 1994 edition with local amendments; Standard Fire Prevention Code- 1994 edition; Life Safety Code—1974 edition with local amendments are adopted by reference. The local amendments are found elsewhere in this article and are hereby adopted by reference to apply to the incorporated area of the city. A copy of the codes shall be filed in the office of the city clerk and shall be available for public inspection during regular hours.

Being the Owner/Tenant of said following property, described as:
313 Old Brick Rd., City of Bunnell, County of Flagler, State of Florida
Parcel ID number 12-12-30-0650-000A0-0092

YOU ARE HEREBY DIRECTED TO CORRECT ALL THE DESCRIBED VIOLATIONS WITHIN 30 DAYS OF RECEIPT OF THIS LETTER.

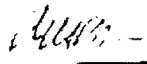
TO BECOME IN COMPLIANCE YOU MUST:

- Have a licensed contractor submit a building permit application request and all necessary drawings and/or supporting documentation for the steps, railing and room projects to the City of Bunnell Building Department located at 201 W. Moody Blvd., Bunnell, FL 32110. The contractor must have a current City of Bunnell Business Tax Receipt (BTR).
- Or remove the steps, railing and room projects to include any unpermitted work completed

If these violations are not corrected as indicated above, it will be assumed you do not intend to comply with this LEGAL ORDER from CITY CODE ENFORCEMENT AUTHORITIES.

This case shall then move forward to the CITY of BUNNELL Code Enforcement Board for further action. The Code Enforcement Board is empowered to levy a fine of UP TO \$250.00 (Two hundred and fifty dollars) PER DAY, PER VIOLATION, for a first violation, OR UP TO \$500.00 (Five hundred dollars) PER DAY, PER VIOLATION, if it is a repeat violation.

Further: The City of Bunnell has the authority to apply a lien against your real estate in order to collect such fines imposed and not paid. It is your responsibility to contact the Code Enforcement Officer at 386-437-7516 for inspection once in compliance.



Mick Cuthbertson
Code Enforcement Officer
City of Bunnell
PO Box 756
Bunnell, FL 32110

7015 3010 0002 2747 2630

U.S. Postal Service[™]
CERTIFIED MAIL[®] RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com

OFFICIAL USE

Certified Mail Fee

\$

Extra Services & Fees (check box, add fee as appropriate)

- ☐ Return Receipt (hardcopy) \$ _____
☐ Return Receipt (electronic) \$ _____
☐ Certified Mail Restricted Delivery \$ _____
☐ Adult Signature Required \$ _____
☐ Adult Signature Restricted Delivery \$ _____

Postage

\$

Total Postage and Fees

\$

Sent To

Mr. John J. Graham

313 Old Brick Rd
Bunnell, FL 32110

City, State, ZIP+4[®]

Postmark
Here

[English](#)[Customer Service](#)[USPS Mobile](#)[Register / Sign In](#)

USPS Tracking®

[Still Have Questions?](#)[Find Answers to Your Questions](#)[Get Easy Tracking Updates +
Sign up for My USPS.](#)Tracking Number: **70153010000227472610**

Product & Tracking Information

Postal Product:**Features:**
Certified Mail™**SHIP DATE****September 13, 2016 , 10:13
am****SHIP TO**Delivery point with
no address**SHIP TO****BUNNELL, FL 32110**[View Tracking History for this Tracking Number](#)**September 12, 2016 , 2:36
am**

In Transit to Destination

**September 10, 2016 , 8:36
pm**

Arrived at USPS Facility

MID FLORIDA, FL 32799

**September 10, 2016 , 9:51
am**

Arrived at USPS Facility

ORLANDO, FL 32862

**September 9, 2016 , 10:21
pm**

Departed USPS Facility

JACKSONVILLE, FL 32203

September 9, 2016 , 6:01 pm

Arrived at USPS Facility

JACKSONVILLE, FL 32203

Track Another Package

Tracking (or receipt) number

[Track It](#)

Manage Incoming Packages

[Track all your packages from a dashboard.
No tracking numbers necessary.](#)[Sign up for My USPS.](#)

MATTHEW C. BOTHWELL, P.A.

ATTORNEY AND COUNSELOR AT LAW

September 29, 2016

Sara Caldwell, Esq.
Sara Caldwell, P.A.
P.O. Box 2023
Daytona Beach, Florida 32115

Re: Breach of Lease/Notice of Default
313 Old Brick Road

Dear Ms. Caldwell,

Thank you for your September 22, 2016 letter on behalf of Mr. J.J. Graham responding to my September 9, 2016 notice of default by Mr. Graham of his lease for the property located at 313 Old Brick Road, Bunnell, Florida 32110. Please accept this letter as a second notice of Mr. Graham's continued breach of lease and demand that the same be cured within ten (10) days of this letter.

According to City of Bunnell Code Enforcement Officer Mr. Mick Cuthbertson, your client, J.J. Graham, has provided the city architectural drawings and an application for a building permit for construction already completed on the subject property. As the owners of the property to which Mr. Graham has previously made substantial changes my client requests he forward to my office a copy of the architectural drawings provided to the city within ten (10) days of this letter. I also understand that the code violations outlined in my September 9, 2016 letter have not been cured as the city has not received all necessary paperwork and information from Mr. Graham. My client must protect itself from potential penalties to be imposed on the property as a result of Mr. Graham improper actions and, as such, please advise within two (2) days of receipt of this letter when said violations will be cured. Should Mr. Graham be unable or unwilling to cure said violations I ask that you please let me know immediately.

Your September 22, 2016 letter also provides an insurance declarations page and select portions of a commercial general liability insurance policy. These documents appear to limit insurance payouts for medical expenses to any one person resulting from any accident or injury on the subject property to five thousand dollars (\$5,000.00). The lease at issue requires your client carry, at his expense throughout the term of the lease, public liability insurance with "minimums of \$500,000.00 on account of bodily injuries or death of one person and \$1,000,000 on account of bodily injuries to and death other than one person as a result of any one accident or disaster..." The declaration page for the insurance policy provided by your client does not appear to comply with the insurance requirements of the lease as it limits insurance payouts for medical expenses to just five thousand dollars (\$5,000.00). As such, to determine compliance with the subject lease, I would ask that you please provide my office a complete copy of the insurance policy held by Mr. Graham for the property which he believes complies with the terms of the lease.

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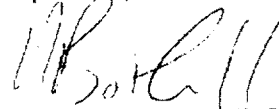
Since my September 9, 2016 letter and as recently as September 27, 2016 the landlord has received complaints from other tenants continuing to find trash and debris on the property outside the premise rented by Mr. Graham including cigarette butts and beer bottles left on or in the displays of other tenants. Such actions are creating a nuisance that must be cured. As such, in accordance with the lease, please instruct your client to confine all smoking, drinking, eating, parties and events which he supports or holds on the property to the 6000 square foot building he occupies. The tenant of the premises surrounding the building has also requested that the property he controls be a smoke free zone and the landlord requests Mr. Graham honor that request.

Your September 22, 2016 letter also fails to include the names, addresses and contact phone numbers for all parties to which Mr. Graham has sublet space on the property. I would again ask that you please provide this information within ten (10) days of receipt of this letter as the property owner has a right and obligation to know who occupies its building and the nature of the business conducted on the property.

Finally, while my client acknowledges and appreciates Mr. Grahams offer to purchase the property for four hundred thousand dollars (\$400,000); it is worth far in excess of his offer which is respectfully declined.

Thank you for your cooperation and understanding and, as always, should you have any questions, please do not hesitate to contact me.

Respectfully,

A handwritten signature in black ink, appearing to read "M. Bothwell", written over a horizontal line.

Matthew C. Bothwell, Esq.

cc Nick Balata

MATTHEW C. BOTHWELL, P.A.
310 THIRD ST.
NEPTUNE BEACH, FL 32266
(P): 904-351-6640
(F): 904-272-7051

From the desk of:
Matthew C. Bothwell, Esq.

FAX COVERSHEET

To: Sara Caldwell, Esq.

From: Matthew C. Bothwell, P.A.

Fax: (386) 253-6931

Date: September 29, 2016

Phone:

Pages: 3 (Including Fax Coversheet)

Re: J.J. Graham

CC:

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