IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

SUPREME COURT NO. 94521-7

COURT OF APPELAS NO. 47905-2-II

LARRY D. RILEY,

Appellant,

Vs.

IRON GATE SELF STORAGE; ESMS PARTNERS LP; GLEN L. ARONSON EVE ARONSON TRUST; PRIME COMMERCIAL PROPERTY, INC.; all dba IRON GATE SELF STORAGE; dba IRON GATE STORAGE – CASCADE PARK,

Respondents.

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Larry Riley, appellant below, hereby petitions for review of the Court of Appeals decision identified in Part C.

B. COURT OF APPEALS DECISION

Appellant seeks review of the published opinion issued by the Court of Appeals for Division II in the case of *Larry D. Riley v. Iron Gates Self Storage; et al.* (April 18, 2017) (47905-2) (App. A. hereto).

C. ISSUES PRESENTED FOR REVIEW

1. Does the character of the tort of conversion change if there is an element of inadvertence or mistake in connection with the willful interference with a chattel without lawful justification, whereby a person entitled thereto is deprived of the possession of it?

2. Is an actor relieved of liability to another for conversion by the actor's belief, because of a mistake of law or fact not induced by the other, that the actor: (a) has possession of the chattel or is entitled to its immediate possession, or (b) has the consent of the other or of one with one to consent for him, or (c) s otherwise privileged to act?

3. Is a contractual limitation on liability a defense to intentional conduct by the intentional actor who claims the benefit of the defense?

4. Does the conduct of a storage unit owner who intentionally sends out lien and auction notices required by RCW 19.150.040 & 060 that fail to comply with the notice requirements of those sections fall greatly below the standards established by law for the protection of others who are storage unit tenants to whom the notices are sent?

5. Does a storage unit owner who conducts an auction for the sale of a storage unit tenant's storage unit contents to recover rent arrearages for which statutorily inadequate lien and auction notices have been sent out engage in conduct that falls greatly below the standards established by law for the protection of others who are storage unit tenants to whom the notices are sent?

6 Is the *Wagenblast v. Odessa Sch. Dist. No. No. 105-157-166J,* 110 Wn.2d 845, 852, 758 P.2d 968 (1988) criteria for public policy applicable to the intentional tort of conversion?

7. Was harm to Mr. Riley substantially certain to result from the the seizure and sale of his property because Mr. Riley would have been permanently deprived of the property by its sale?

D. STATEMENT OF THE CASE

1. Facts Giving Rise to the Dispute

Larry Riley rented storage unit 028 from Iron Gate on December 1 2003.[1] Iron Gate's standard form rental agreement contained exculpatory language that purported to limit Iron Gate's liability to $5,000.[2] Ostensible limitation language from the rental agreement on Iron Gate's liability reads as follows:

> 5. . . . It is understood and agreed that Occupant may store personal property with substantially less [sic] or no aggregate value [sic] and nothing herein contained shall constitute or evidence, any agreement or administration [sic] by Operator that the aggregate value of all suchpersonal [sic] property is, will be, or is expected to be, at or near $5,000. It Is [sic] specifically understood and agreed that Operator need not be concerned with the kind, quality, or value of personal property or other goods stored by Occupant in or about the Premises pursuant to this Rental Agreement.
>
> 7. LIMITATION OF OPERATOR'S LIABILITY: INDEMNITY. [sic] Operator and Operator's [sic] Agent(s) [sic] shall not be liable to Occupant for any damage or lose to any person [sic] . [sic] Occupant or any property stored in, on or about the Premises or the Project, arising from any cause whatsoever, including, but not limited to, theft, fire, mysterious disappearance, rodents, acts of God or the active or passive acts, omissions or negligence of Operator or Operator's [sic] Agents: except that Operator and Operator's Agents, as the case may be, except as otherwise provided in paragraph 6, be liable to Occupant for damage of loss [sic] to Occupant or Oocupanties [sic] Property resulting from Operator's fraud, willful injury or willful violation of law. Occupant shall indemnify and hold Operator and Operator's Agents harmless from any and all damage, loss, or expense arising out of, [sic] or in connection with, [sic] any damage to any person or property occurring In [sic], on or about the Premises arising in any way out of Occupant's [sic] use of the Premises, whether occasioned by Operator or Operator's [sic] Agents' active or passive acts, omissions or negligence or otherwise, other than damage, loss,

[1] See Ex. 1, the Lease Agreement; CP 142-147.
[2] Ex. 1 CP 142-143; CP 172 (p.87)

> orexpense [sic] In [sic] connection with Operator or Operator's Agent's fraud, willful injury or willful violation of law. Notwithstanding anything contained in this Rental Agreement, In [sic] no event shall Operator or Operator's Agents be liable to Occupant In [sic] an amount In [sic] excess of $5,000 for any damage or lose to any person, [sic] Occupant or any properly stored in, [sic] on or about the Premises or the Project arising from any cause whatsoever, Including [sic], but not limited to, Operator's [sic] Agents' active or passive acts, omissions or negligence.

After an arrearage arose in 2010, Iron Gate commenced measures to auction Mr. Riley's storage unit contents to satisfy unpaid rent.

The July 1, 2010 Notice of Lien (preliminary lien notice) that was sent by Iron Gate to Mr. Riley is attached as Ex. 3. **That lien notice fails to perfect a lien** by failing to state the required implementation date of the lien of not less than 14 days from mailing as required by RCW 19.150.040.

The 14-day final auction notice and the auction are only permitted if there has first been compliance with RCW 19.150.040. Only if there is compliance with 040 does the storage owner's lien attach, which is a condition precedent to the sale of the occupant's property to satisfy the lien. Upon compliance with 040, RCW 19.150.060(3) requires a 14-day mailed notice of the auction date (Notice of Auction, Ex. 4) before the property can be sold at auction.

Katy Johnston (née Wagnon), the Iron Gate resident manager in charge of the facility where Larry Riley's storage unit number 028 was located,[3] sent out the lien and auction notices to Larry Riley.[4] She hand wrote in the July 14, 2010 date as the deadline for him to make payment and July 15th as the date on which the auction would occur. These were dates that she intended to write in.

The auction notice was sent seven days before expiration of the 14-day notice period for the lien notice (Ex. 9), contrary to the terms of RCW 19.150. 040(2) and 060. Further, Iron Gate's 060 auction notice required that payment be made by July 14, 2010, a day before what would have been the end of the preliminary lien notice period required by 040(2) Ex. 9

The auction was set to occur on July 15, 2010 by the auction notice.)Ex. 4) The auction notice sent was a six-day notice rather than the 14-day notice required by the statute. The auction was conducted by Iron Gate on July 15, 2010 and the contents of Mr. Riley's storage contents were sold, including his personal papers and personal photographs, which Iron Gate was required to hold for him for six months and not sell at the auction. RCW 19.150.060(3) & (5).

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[3] CP 0160 17-20.
[4] Id

Mr. Riley actually received the auction notice in the mail on July 16, 2010, the day after the auction.[5] Mr. Riley received the auction notice 7 days before the expiration of the statutory 14-day auction notice period required by 060(3).

Mr. Riley appeared on the Iron Gate premises on July 16th to offer payment for the arrearage on the day after the auction and seven days prior to the expiration of the statutory14-day period required for the auction notice.[6] At that time Mr. Riley was told by Iron Gate's resident manager in charge that his storage unit was completely empty and the contents sold.

On July 17, 2010, a letter from Mr. Riley's attorney, attached as Exhibit 4, was delivered to the Iron Gate resident managers.[7] It explained the invalidity of the auction; that Mr. Riley had been there the day before to pay the arrearage, but that he was told that the unit contents had been sold; demanded access to the storage unit and the return of Mr. Riley's storage unit contents. There was no response to this letter by Iron Gate until December 2010, five months after the auction. See Ex. B, Sellers Declaration §3 (CP 0137).

At the time of the auction, Iron Gate had in effect an agreement (Buyer's Agreement CP 0156) with the purchaser of Mr. Riley's storage

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[5] § 20, Riley Dec. CP 0120
[6] § 22, Riley Dec CP 0120
[7] § 23, Riley Dec CP 0120

unit contents that entitled Iron Gate to repurchase the storage unit contents from the buyer for a period of sixty days following the auction.[8] Iron Gate made no attempt to repurchase the storage unit contents within 60 days.

2. Proceedings Below

Mr. Riley sued Iron Gate in Clark County Superior Court for damages for conversion, breach of contract, and violations of the Consumer Protection Act, alleging the invalidity of the statutorily-required lien and auction notices, and the invalidity of a limitation on liability ($5,000), indemnity, and risk shifting provisions in Iron Gate's standard form, non-negotiable rental agreement.

The Trial Court, the Hon. David E. Gregerson presiding, entered an order of partial summary judgment on July 17, 2015 in favor of Iron Gate "limiting any recovery of damages by Plaintiff, under any theory or theories pled, to a maximum of $5,000".[9] All of the money that Mr. Riley could have recovered based on the order was tendered to Mr. Riley by Iron Gate's payment of the funds into the Clerk of the Superior Court.[10] The trial court entered a final judgment of dismissal of the case. (CP 307 & 308). The Court of Appeals affirmed the trial court's ruling that recovery

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[8] Ex. 5; CP 0170 Aronson depo, 25/1-25; p 26/1-2.
[9] CP 0305-0306
[10] *CP 0307-0308*

of monies on any theory was subject to the $5,000 contractual limitation, but reversed the limitation as to CPA remedies. App. A.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

The Supreme Court's acceptance of review of a Court of Appeals' decision terminating review is if that decision fits within one of the four criteria set forth in RAP 13.4(b). Of the four listed, these three are applicable as will be discussed in this argument: (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or . . . (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

This holding of the Court of Appeals does damage to long-held principles of decisional law concerning the tort of conversion that will be felt by storage unit tenants throughout the state. It also establishes stare decisis on the enforceability of exculpatory language in a contract that limits liability contrary to established legal principles, which will facilitate the enforceability of such limitations for contracts throughout the state.

1. The Court of Appeals decision changes the tort of conversion so that any mistake or inadvertence along the way in a set of facts for an intentional act converts

the tort from conversion to one of negligence, which is contrary to the long history of English and American Jurisprudence regarding the tort of conversion.

Every first-year law student in torts class learns the black letter law that conversion is an intentional tort for which the intent required is to do the act that constitutes the conversion; and that proof of the defendant's knowledge, impure motives, or bad faith is not essential to establishing the requisite intent for a conversion.

The classic statement regarding these characteristics of conversion are found in *Kruger v. Horton,* 106 Wn.2d 738, 743, 725 P.2d 417 (1986). *Kruger v. Horton* cites *Judkins vs Sadler-MacNeil,* 61 Wn.2d 1, 3 (1962), one of the most often cited, notable cases on conversion in this state, which correctly states in quoting from that case:

> It is said in Salmond on the Law of Torts (9th ed. 1936), § 78, p. 310:
>
> > "A conversion is the act of wilfully interfering with any chattel, without lawful justification, whereby any person entitled thereto is deprived of the possession of it."[11]

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[11] *See also Restatement (Second) of Torts* § 222A (1965); *Reliable Credit v Progressive,* 171 Wn.app 630 (20132); *Daminano. V Lind,* 163 Wn. App. 1017 (2011) – (While a plaintiff must show that the interference was intentional, no intent to deprive the owner must be shown.); *Lowe v. Rowe,* 173 Wn.App. 253, 294 P.3d 6 (2012); *Brown v. Brown,* 157 Wn.App. 803, 239 P.3d 602 (2010) ("Wrongful intent is not an element of conversion, and good faith is not a defense.") ; *In re Marriage of Mangham,* 153 Wn.2d 566, n. 8, 106 P.3d 212 (2005) ("Good faith is irrelevant in a conversion action."); *Denman v. Zayo Group,* (W.E. Wash. 7-22-2013); *Ilyia v. Khoury* (W.D. Wash. 9-27-2013)).

A classic example of these principals is found in Comment C to §244 of the Restatement of Torts[12]:[13]

> "A, the owner of a garage, receives an automobile from B for storage. B demands the return of the automobile. After the expiration of a reasonable time for inquiry, A refuses to return the car because he honestly and reasonably believes that his storage charges have not been paid, and that he has a lien against the car. In fact B has paid A's employee, who has failed to report the payment. A is subject to liability for conversion."

Iron Gate sold Mr. Riley's property to recover unpaid rent without giving required statutory notices. Iron Gate's claim on innocence in selling the property is not a defense to conversion; Iron Gate intended to auction Mr. Riley's property. Any alleged good faith does not alter the fact that Iron Gate denied Mr. Riley possession of his property without any valid legal privilege to do so because Iron Gate had failed to send notices in compliance with RCW 10.150.040 & 060. Any alleged good faith would have been extinguished when Iron Gate received the July 17, 2010, letter from Mr. Riley's attorney explaining the illegalities of Iron Gate's lien (Ex.3 CP 153-154) and auction (Ex. 4) notices, and then failed

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[12] "An actor is not relieved of liability to another for trespass to chattel or for conversion by his belief, because of a mistake of law or fact not induced by the other, that he:
(a) Has possession of the chattel or is entitled to its immediate possession, or
(b) Has the consent of the other or of one with power to consent for him, or
(c) Is otherwise privileged to act."
Restatement (Second) of Torts § 244 (1965).

[13] Restatement (Second) Torts § 244, Comment C, Illustration 5 (1965)

to exercise its rights under its Buyer's Agreement to reacquire the property and subject it to the statutory lien and auction requirements or to allow Mr. Riley to reclaim his property by curing his arrearage in rent.

The Court of Appeals decision characterizes the Notice of Auction as "mistakenly contain(ing)" a 6-day auction notice period rather than the 14-day notice required by RCW 19.150.060. The Court of Appeals points out that Iron Gate acknowledged it "mistakenly" violated the Storage Act. Iron Gate itself used the term "a mistake inadvertently made" on page 7, #5, "The Auction", in its Respondent's Brief to the Court of Appeals.

But negligence is not the issue here. The issue is whether Iron Gate intended to send out lien and auction notices that did not comply with RCW 19.150.040 & 060 whether or not the noncompliance was comprehended by Iron Gate; and whether Iron Gate intended to sell Mr. Riley's storage unit contents at an auction pursuant to the faulty notices, or which there can be little question.

If all facts and their reasonable inferences are construed in a light most favorable to the nonmoving per *Loeffelholz v. Univ. of Wash.*, 175 Wn.2d 264,271, 285 P.3d 854 (2012), these characterizations of negligence fail to find any support in the evidentiary record. There is no evidence in the record that Iron Gate actually acted inadvertently or unintentionally. The evidence presented by Mr. Riley reflects that the

resident manager of the storage unit knew what date she was putting in the auction notice, which had been provided with by Iron Gate's main office, and she testified that she intended to use that date CP 0162, pg 25/2-20.

There can be no question that Iron Gate conducted an auction with the intent to sell Mr. Riley's storage unit contents; selling Mr. Riley's contents was not inadvertent – it was purposeful. Likewise, there is no testimony or declaration in the record to the effect that either sending the notices or selling Mr. Riley property was unintended.

If the Court of Appeals opinion is taken to its logical conclusion, if there is ever any aspect of mistake or inadvertence along the way in a conversion set of facts, the tortfeasor is absolved of legal responsibility for an intentional act (at least to the extent of being able to enforce his own damage limitations).

Mr. Riley showed up at Iron Gate on the 8th day - the day following his receipt of the auction notice - to pay his rent arrearage and confirm his possession of his storage unit contents, at which time he was told by the resident manager that his unit was empty and that his property had been sold. CP 0119, 0120 # (21) & (22). Contrary to the Court of Appeal's factual recitation that Iron Gate re-obtained most of Mr. Riley's property and made it available to him to pick up, Iron Gate did not recover even many let alone most of the auctioned items, nor was any of it

returned or made it available to Mr. Riley until over five month after the auction. CP 0124 #28. Nor did Iron Gate acknowledge Mr. Riley's Attorney's letter delivered two days after the auction [CP 0120 (23); CP 053 & 0154] until over five months later, (CP 0137 #3), which advised Iron Gate of the illegalities connected with the notices and auction.

Iron Gate had a contract with its Buyer that entitled Iron Gate to buy back the unit contents for 60 days following the auction. All that Iron Gate did in this regard was to put Mr. Riley in touch with their Buyer so that Mr. Riley could buy back his own property with the Buyer's agreement as to the purchase price. CP 0254 pg 27, l # 2. Mr. Riley only got back a small portion of his property in the January following the July auction. CP 0124 (0-124, 0125 (28))

In response to Mr. Riley's contention that the volitional act that he argues is an element of conversion and included in the definition of "willful", the Court of Appeals cites *Zellmer v. Zellmer,* 164 Wn.2d 147, 155 n.2, 188 P.3d 497 (2008) for the proposition that "willful" requires a showing of actual intent.

An intentional act has two elements: (1) there must be a volitional act; (2) the harm to the plaintiff must be substantially certain to result from the volitional action. 16 D. Dewolf & K. Allen, *Wash. Prac.* Tort Law & Practice § 14:2 (4th Ed 2014).

"The word intent is used throughout the Restatement of this Subject to denote that the actor desires to cause consequences of his act, or that he believes that the consequences are substantially certain to result from it." *Restatement (Second) Torts* § 8A (1965). The consequences of sending the notices and conducting the auction would be to permanently deprive Larry Riley of his property that was in storage unit 028.

> "If the actor knows that the consequences are certain, or substantially certain, to result from his act, and still goes ahead, he is treated by the law as if he had in fact desired to produce the result." *Restatement (Second) Torts* § 8A, comment b (1965).

It is pretty hard to understand how the act of seizing and selling a storage unit tenant's property isn't done with an actual intent to harm; there could be no greater harm with respect to someone's property than to seize and sell all of it.

2. The Court of Appeals decision would allow exculpatory contract language to be raised in defense of intentional acts committed by the party claiming the benefit of the exculpatory limitation

On page 6 of the decision (App. A), under B, the Court of Appeals holds that the damage limitation applies to damages "arising from any cause whatsoever, including conversion." The limitation would therefore apply to any intentional act. However, the decision of the Court is inconsistent on this point. For instance, on page 14 (top) the Court holds that damage limitations are enforceable in defense of torts involving

deliberate or volitional conduct so long as there is no evidence of fraudulent or willful misconduct, a distinction for which there is no case authority cited. The language in the case on this issue is therefore conflicting and irreconcilable. Both holdings are also inconsistent with the bulk of the decisional law and principles articulated by appellate courts in the State of Washington.

> "The general rule in Washington is that exculpatory clauses are enforceable unless (1) they violate public policy [*Wagenblast* factors], or (2) the **negligen**t act falls greatly below the standard established by law for protection of others, or (3) they are inconspicuous." *Scott v. Pacific West Mountain Resort*, 119 Wn.2d 484, 834 P.2d 6 (1992). [Bolding added.]

Exculpatory language is not generally enforced against intentional torts committed by the party claiming the benefit of the limitation. Were it otherwise as the Court of Appeals holds, in some contracts there may be an incentive to auction the property and elect to pay the damage limitation because money could be made at the expense of innocent parties who would be left without any remedy beyond the damage limitation. If stored property appreciated to $25,000 in value, a storage unit owner who wrongfully auctions the property to a friend, relative or himself (probably through a related entity) would reap a pretty handsome profit by only having to pay the amount of the $5,000 damage limitation in return.

Washington courts have only upheld damage limitations in defense of ordinary negligence. Washington state courts have not upheld enforcement of such limitations in defensive of causes of action for gross negligence or substantial negligence. Exculpatory language has not been upheld in defense of intentional torts. For instance, Washington courts have for decades found preinjury releases that purport to extend to gross negligence and intentional torts unenforceable. *Boyce v. West,*, 71 Wn. App. at 665; *McCutcheon v. United Homes Corp.*, 79 Wn.2d 443, 447, 486 P.2d 1093 (1971).

As Justice Chambers wrote in *Scott v. Cingular Wireless*, 160 Wn.2d 843, 854 161 P.3d 1000 (2007), "Contract provisions that exculpate the author for wrongdoing, especially intentional wrongdoing, undermine the public good."

"A term exempting a party from tort liability for harm caused intentionally or recklessly is unenforceable on grounds of public policy." *Restatement (Second) of Contracts* § 195(1) (2007).

The principle that exculpatory clauses may not be enforced to limit liability for intentional torts is also commonly accepted in the law of other states.[14]

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[14] *Loewe v. Seagate Homes, Inc.*, 987 So.2d 758 (Fla.App. 2008); *Barnes v. Birmingham International Raceway, Inc*, 551 So.2d 929 (Ala. 1989); *Reece v. Finch*, 562 So.2d 195 (Ala. 1990); *Anderson v. McOskar Enterprises*, 712 N.W.2d 796 (Minn.App. 2006);

In *Condradt v. Four Star Promotions, Inc.*, 45 Wn.App. 847, 728 P.2d 617 (1986) the Court discussed the gross negligence exception stating "willful or wanton misconduct falls between simple negligence and an intentional tort." This indicative of the fact that Washington State courts would also include intentional conduct in the same category as gross negligence in refusing to enforce exculpatory clauses which prohibit liability for one's own intentional acts.

3. RCW 19.150.040 & 060 establishes public policy that the Court of Appeals' holding would eviscerate.

Ch. 19.150.040 & 060 establish the public policy of this State that the tenants of storage units shall not be subject to the foreclosure of their storage unit contents except after being sent consecutive statutorily-required 14-day lien and auction notices, which Iron Gate failed to provide for its seizure and foreclosure of Larry Riley property. RCW 19.150.040 & 060. The Court of Appeals rules on page 7 of its decision (App. A) that these exculpatory limitations do not violate public policy based on the criteria established in *Wagenblast v. Odessa Sch. Dist. No. No. 105-157-*

Tayar v. Camelback Ski Corp, 616 Pa. 385, 47 A.3d 1190 (2012); *Elmer v. Coplin*, 485 So.2d 171 (La.App. 1986); *Enron Oil Trading & Transp. Co. v. Underwriters of Lloyd's of London*, 47 F. Supp. 2d 1152 (D. Mont. 1996); *Rowan v. Vail Holdings, Inc.*, 31 F. Supp.2d 889 (D. Colo. 1998); *Quinn v. Mississippi State University*, 720 So.2d 843 (Miss. 1998); *Hatch v. V.P. Fair Foundation, Inc.*, 990 S.W.2d 126 (Mo. Ct. App. E.D. 1999); *Werdehoff v. General Star Indem. Co.* 229 Wis.2d 489, 600 N.W.2d 214 (1999); *Kuzmiak v. Brokchester, Inc.*, 33 N.J. Super 575, 111 A.2d 425 (1955).

166J, 110 Wn.2d 845, 852, 758 P.2d 968 (1988). However, the *Wagenblast* analysis is applicable only to exculpation from liability for breach of contract or simple negligence. *Wagenblast at* 848. The *Wagenblast* Court took these factors from the California Supreme Court as stated in *Tunkl v. Regents of the University of California*, 60 Cal.2d 92, 383 P.2d 441 (1963). The *Tunkl* decision is limited to consideration of an exculpatory clause for ordinary negligence. *Id.* at 94.

The historical conspicuousness and gross negligence justifications for invalidating an exculpatory clause are independent of the *Wagenblast* analysis. Because Iron Gate's actions in selling Mr. Riley's property were intentional, the exculpatory language in this case are independent of the *Wagenblast* analysis.

4. It is against public policy to allow Iron Gate to exculpate itself from liability for violating Chapter 19.150 RCW.

RCW 19.150 (40) & (60) are a clear statements of public policy by the Legislature. The statutory sections apply specific restrictions on the use and foreclosure of liens by self-storage facilities. As a storage unit tenant, Mr. Riley falls squarely within the class of people the statute is intended to protect. The enforcement of any attempt to contract around liability for violating the lien and foreclosure provisions of this statute are contradictory to that public policy. Iron Gate's argument constitutes an

attempt to preclude the imposition of any consequence as a result of Iron Gate's intentional tort and its failure to follow the requirements of the lien statute, except for the payment of capped damages that may be far less than the value of the property seized and converted.

"Contract terms are unenforceable on grounds of public policy when the interest in its enforcement is clearly outweighed by a public policy against the enforcement of such terms." *State v. Noah*, 103 Wn.App. 29, 50, 9 P.3d 858 (2000) (citing *Restatement (Second) of Contracts* §178). *See also Scott v. Cingular Wireless*, 160 Wn.2d 843, 161 P.3d 1000 (2007) (citing *Restatement (Second) of Contracts* §178); *LK Operating LLC v. The Collection Group LLC*, 181 Wn.2d 48, 85, 331 P.3d 1147, 1164 (2014) (citing *Restatement (Second) of Contracts* §178).

"The underlying inquiry when determining whether a contract violates public policy is whether the contract 'has a tendency' to be against the public good, or to be injurious to the public." *LK Operating LLC v. The Collection Group LLC*, 181 Wn.2d 48, 86, 331 P.3d 1147, 1164 (2014).

In *Eifler v. Shurgard Capital Management Corp.*, 71 Wn.App. 684, 861 P.2d 1071 (1993), the rental agreement only exculpated the owner from negligence, not from intentional acts. The Court began its analysis by noting: "generally a party to a contract can limit liability for

damages resulting from **negligence**." *Id.* at 690. Eifler asserted claims for "breach of contract, negligence, restitution, and violation of the consumer protection act." *Id.* at 688. On appeal "The trial Court granted the motion on grounds that Shurgard had effectively limited its liability for **ordinary negligence** by means of the lease." The trial Court submitted the issue of gross negligence to the jury." *Id.* at 689. The Court applied an evaluation criterion from *Wagenblast v. Odessa School Dist. No. 105*, 110 Wn.2d 845 848, 758 P.2d 968 (1988) to determine the enforceability of exculpatory language **only** to the claims for "breach of contract and negligence.

G. CONCLUSION

Larry Riley asks that the Court reverse the Court of Appeals decision except as it pertains to the Consumer Protection Act and rule that contractual limitations on liability and other exculpatory contract language are not enforceable in defense of intentional acts by the party claiming the benefit of the exculpatory language.

May 18, 2017

Respectfully submitted,

James L. Sellers
Attorney for Appellant
WSBA # 4770

APPENDIX

Appendix A...Decision of the Court of Appeals.....1 - 18

Exhibit 1.....Iron Gate/Riley 2003 Rental Agreement....A - F
CP 142-147

Exhibit 2.....Section 5, 6, & 7 of Rental Agreement
Retyped..... .G - J

Exhibit 3.....Iron Gate's Invalid Standard Form
Lien Notice to Riley.....K
CP 149 (Notice of Lien)

Exhibit 4.....Iron Gate's Invalid Standard Form
Auction Notice to Riley.....L
CP 151 (Notice of Auction)

Exhibit 5.....07/17/10 Riley's Attorney's Letter to
Iron Gate sent Immediately Following
Auction .....M, N
CP 151

Exhihit 6.....Iron Gate's Buyer's Agreement
In Effect.....O
CP 156 (at time of Riley Auction)

Exhihit 7.....Iron Gate's Invalid Standard Form 2009
Auction Notice.....P
CP 166 (Notice of Auction)

Exhihit 8.....RCW 19.150.040, 050, & 060.....Q, R
(in effect 2010)...

Exhihit 9.....Calendar of Events.....S, T, U

Filed
Washington State
Court of Appeals
Division Two

April 18, 2017

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

LARRY D. RILEY, Appellant, v. IRON GATE SELF STORAGE; ESMS PARTNERS LP; GLEN L. ARONSON; EVE ARONSON TRUST; PRIME COMMERCIAL PROPERTY, INC.; all dba IRON GATE SELF STORAGE; dba IRON GATE STORAGE-CASCADE PARK, Respondents.	No. 47905-2-II PUBLISHED OPINION

MELNICK, J. — Larry Riley entered into a self-storage rental agreement with Iron Gate Self Storage that contained provisions limiting Iron Gate's liability and maximum recoverable damages. Riley appeals the trial court's order granting Iron Gate's partial summary judgment, denying his motion for reconsideration, and entering a final judgment of dismissal with prejudice. We conclude that the trial court properly granted summary judgment on the breach of contract and conversion claims. We further conclude that the limiting provisions in the rental agreement violated public policy under the Consumer Protection Act (CPA) but not under the Self-Service Storage Facilities Act (Storage Act). We affirm in part and reverse in part.

FACTS

Iron Gate Storage—Cascade Park (Iron Gate) is a commercial business that rents storage space to the public. On December 1, 2003, Riley entered into a rental agreement with Iron Gate

to rent storage units. The agreement included a cap of approximately $5,000 on the value of personal property that may be stored in the unit. The applicable provision stated:

> 5. **USES AND COMPLIANCE WITH LAW** . . . Occupant may store personal property with substantially less or no aggregate value and nothing herein contained shall constitute or evidence, any agreement or administration by Operator that *the aggregate value of all suchpersonal* (sic) *property is, will be, or is expected to be, at or near $5,000.* **It Is specifically understood and agreed that Operator need not be concerned with the kind, quality, or value of personal property or other goods stored by Occupant in or about the Premises pursuant to this Rental Agreement.**

Clerk's Papers (CP) at 142 (italicized emphasis added).

Another provision in the rental agreement included a limitation on liability and a $5,000 cap on damages:

> 7. **LIMITATION OF OPERATOR'S LIABILITY; INDEMNITY.** Operator and Operators Agent shall not be liable to Occupant for any damage or lose (sic) to any person. Occupant or any property stored in, on or about the Premises . . . *arising from any cause whatsoever*, including but not limited to . . . active or passive acts, omissions or negligence of Operator or Operators Agents *[except from] Operator's fraud, willful injury or willful violation of law.* . . . Notwithstanding anything contained in this Rental Agreement, *In no event shall Operator or Operator's Agents be liable to Occupant In an amount In excess of $5,000* for any damage or lose (sic) to any person, Occupant, or any properly (sic) stored . . . *arising from any cause whatsoever, Including, but not limited to*, Operators Agents' active or passive acts, omissions or negligence.

CP at 143 (italicized emphasis added).

The agreement also included a clause that stated the occupant shall maintain an insurance policy covering at least 100 percent of the actual cash value of stored personal property. Riley elected to "self-insure (personally assume all risk of loss or damage)." CP at 143. He initialed his name in each section, indicating that he understood the terms of the agreement.

Over the course of his lease, Riley often fell behind on his rent payments. Iron Gate sent Riley past due notices in May, June, and July 2010. It sent a pre-lien notice to Riley on May 21. It then sent Riley a notice of cutting lock on June 24, followed by a certified notice of lien one week later.

On July 8, 2010, Iron Gate mailed Riley a notice of auction. Iron Gate believed its notices complied with Washington law; however, the Notice of Auction mistakenly contained an auction date that was less than the statutorily required 14 days from the date of the notice. The auction occurred on July 15 and the winning bidder paid less than $2,000 for items in Riley's unit. Riley contacted Iron Gate following the auction and received information that his property had been sold.

Two days after the auction, Riley delivered a letter to Iron Gate expressing his opposition to the auction sale and his belief that the notices were invalid. Riley also notified Iron Gate that he was prepared to pay any outstanding rent. The letter also requested that his property be restored to him.

Iron Gate recovered many auctioned items by repurchasing them from the winning bidder. In addition to the recovered items, Iron Gate continued to store Riley's remaining property at no cost until Riley retrieved it several months later.

In March 2015, Riley filed an amended complaint alleging that Iron Gate violated the Storage Act and the CPA. He alleged that he suffered actual damages in excess of $1.5 million and sought treble damages under the CPA. Riley also alleged that the rental agreement was a contract of adhesion and that its provisions were unconscionable. He further alleged breach of contract and conversion.

Iron Gate moved for summary judgment on Riley's claims and, in the alternative, partial summary judgment against any recovery of damages that exceeded $5,000. Iron Gate acknowledged it mistakenly violated the Storage Act, but stated that it took steps to recover Riley's property. It argued that Riley failed to follow the terms of the rental agreement and the amount of damages he sought was barred by the agreement.

At the hearing on the motion for summary judgment, the trial court deferred its ruling on the summary judgment motion.[1] It granted the partial summary judgment motion and orally ruled that even if Riley successfully brought a claim, he would be bound by the contractual limitation of $5,000 in damages.

Riley moved for reconsideration and the trial court denied the motion. With Riley's agreement, Iron Gate then tendered a $23,000 check to Riley to be held by his attorney pending the outcome of this appeal.[2] Per Iron Gate, this amount reflected the maximum damages for which it could be liable, trebled, and with interest on the trebling, because of the CPA claim.

The trial court entered an order on partial summary judgment and a final judgment of dismissal with prejudice. The final judgment reiterated that Riley's recoverable damages, under all of his causes of action, were limited to a maximum of $5,000. It further stated that the $23,000 check payment tendered to Riley represented "an amount of recoverable damages, plus interest" which was equal to or greater than what Riley could potentially recover at trial. CP at 308. Riley did not object to the form of the order or judgment.

Riley appeals.

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[1] Iron Gate later withdrew this motion and agreed to proceed only on the partial summary judgment motion.

[2] The parties agreed that Riley's counsel would put the $23,000 check in an interest bearing account pending the outcome of this appeal.

ANALYSIS

I. SUMMARY JUDGMENT

A. LEGAL PRINCIPLES

We review an order granting summary judgment de novo. *Loeffelholz v. Univ. of Wash.*, 175 Wn.2d 264, 271, 285 P.3d 854 (2012). Summary judgment is proper if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR 56(c). We construe all facts and their reasonable inferences in the light most favorable to the nonmoving party. *Loeffelholz*, 175 Wn.2d at 271.

A party moving for summary judgment bears the burden of demonstrating that there is no genuine issue of material fact. *Atherton Condo. Apt.–Owners Ass'n Bd. of Dirs. v. Blume Dev. Co.*, 115 Wn.2d 506, 516, 799 P.2d 250 (1990). "A material fact is one upon which the outcome of the litigation depends in whole or in part." *Atherton*, 115 Wn.2d at 516. If the moving party satisfies its burden, the nonmoving party must set forth specific facts demonstrating that a material fact remains in dispute. *Loeffelholz*, 175 Wn.2d at 271. "[C]onclusory statements of fact will not suffice." *Grimwood v. Univ. of Puget Sound, Inc.*, 110 Wn.2d 355, 360, 753 P.2d 517 (1988).

Summary judgment is proper only if reasonable persons could reach but one conclusion from the evidence presented. *Bostain v. Food Express, Inc.*, 159 Wn.2d 700, 708, 153 P.3d 846 (2007). We may affirm summary judgment on any ground supported by the record. *Blue Diamond Grp., Inc. v. KB Seattle 1, Inc.*, 163 Wn. App. 449, 453, 266 P.3d 881 (2011).

When interpreting contracts, we give words in a contract their ordinary, usual, and popular meaning, unless the contract in its entirety clearly demonstrates a contrary intent. *Hearst Commc'ns, Inc. v. Seattle Times Co.*, 154 Wn.2d 493, 504, 115 P.3d 262 (2005). The contract is viewed as a whole, and particular language is interpreted in the context of other contract provisions. *Viking Bank v. Firgrove Commons 3, LLC*, 183 Wn. App. 706, 713, 334 P.3d 116 (2014).

B. SCOPE OF LIMITATION CLAUSE ON DAMAGES

Riley argues that the $5,000 cap on damages in the rental agreement does not apply to intentional torts, such as conversion. We disagree.

Riley focuses on the first part of paragraph 7 of the rental agreement, which states that Iron Gate will not be liable for any damages except for "willful injury or willful violation of law." CP at 143. But the $5,000 damages cap is contained in the second part of paragraph 7, which does not contain any exclusion for willful injury. Instead, the cap applies to damages "arising from any cause whatsoever, Including, but not limited to, Operators Agents' active or passive acts, omissions or negligence." CP at 143. Conversion is a cause of action involving damages "arising from any cause whatsoever." CP at 143. Therefore, the limitation clause imposing the $5,000 cap on damages applies to all of Riley's causes of action.

C. THE LIMITING PROVISIONS ARE ENFORCEABLE

Riley argues that the limiting provisions in the rental agreement are unenforceable because they are ambiguous and violate public policy. We disagree.

"Under the principle of freedom to contract, parties are free to enter into, and courts are generally willing to enforce, contracts that do not contravene public policy." *Keystone Land & Dev. Co. v. Xerox Corp.*, 152 Wn.2d 171, 176, 94 P.3d 945 (2004). The parties to a contract are

bound by its terms. *Torgerson v. One Lincoln Tower, LLC*, 166 Wn.2d 510, 517, 210 P.3d 318 (2009). Courts do not have the power, under the guise of interpretation, to rewrite contracts which the parties have made for themselves. *Clements v. Olsen*, 46 Wn.2d 445, 448, 282 P.2d 266 (1955).

Exculpatory provisions are strictly construed. *Scott v. Pac. W. Mountain Resort*, 119 Wn.2d 484, 490, 834 P.2d 6 (1992). They are enforceable unless they violate public policy, are inconspicuous, or involve liability for acts falling greatly below the standard established by law for the protection of others. *Scott*, 119 Wn.2d at 492. The third exception is generally referred to as the "gross negligence" standard. *See Conradt v. Four Star Promotions, Inc.*, 45 Wn. App. 847, 852, 728 P.2d 617 (1986).

1. THE LIMITING PROVISIONS DO NOT VIOLATE PUBLIC POLICY

Washington courts apply a six-factor balancing test to determine whether an exculpatory agreement violates public policy.[3] These factors come from *Wagenblast v. Odessa Sch. Dist. No. 105-157-166J*, which states that the more of the six factors that "appear in a given exculpatory agreement case, the more likely the agreement is to be declared invalid on public policy grounds." 110 Wn.2d 845, 852, 758 P.2d 968 (1988).

The test is whether: (1) the agreement concerns an endeavor of a type generally thought suitable for public regulations; (2) the party seeking exculpation is engaged in performing a service of great importance to the public, which is often a matter of practical necessity for some members

[3] Washington courts seem to analyze contractual agreements involving "exculpatory" or "limiting" liability provisions for public policy violations using the same factors. *See Wagenblast v. Odessa Sch. Dist. No. 105-157-166J*, 110 Wn.2d 845, 851-55, 758 P.2d 968 (1988); *Vodopest v. MacGregor*, 128 Wn.2d 840, 845-48, 913 P.2d 779 (1996); *Chauvlier v. Booth Creek Ski Holdings, Inc.*, 109 Wn. App. 334, 340-43, 35 P.3d 383 (2001); *Boyce v. West*, 71 Wn. App. 657, 662-63, 862 P.2d 592 (1993). Riley seems to argue the contract clauses at issue are exculpatory provisions. Iron Gate does not concede the point, but asserts the provisions are valid as either limiting provisions or exculpatory provisions.

of the public; (3) such party holds itself out as willing to perform this service for any member of the public who seeks it, or at least for any member coming within certain established standards; (4) because of the essential nature of the service, in the economic setting of the transaction, the party invoking exculpation possesses a decisive advantage of bargaining strength against any member of the public who seeks the services; (5) in exercising a superior bargaining power, the party confronts the public with a standardized adhesion contract of exculpation, and makes no provision whereby a purchaser may pay additional reasonable fees and obtain protection against negligence; and (6) the person or property of members of the public seeking such services must be placed under the control of the furnisher, subject to the risk of carelessness on the part of the furnisher, its employees, or agents. *Boyce v. West*, 71 Wn. App. 657, 663-64, 862 P.2d 592 (1993) (citing *Wagenblast*, 110 Wn.2d at 851-55).

The limiting provisions in Riley's self-storage rental agreement weigh in favor of a majority of the factors listed above. First, as to public regulation, a self-storage facility is a highly regulated industry or service. It must comply with numerous statutory and regulatory requirements contained in the Storage Act. Ch. 19.150 RCW; WAC 308-56A-312.

Second, self-storage facilities are not an essential or necessary public service. "A common thread runs through those cases in which exculpatory agreements have been found to be void as against public policy . . . they are all essential public services—hospitals, housing, public utilities, and public education." *Shields v. Sta-Fit, Inc.*, 79 Wn. App. 584, 589, 903 P.2d 525 (1995) (footnotes omitted) (holding that health clubs contribute to people's health, but are not essential to the welfare of the state or its citizens).

Third, Iron Gate holds itself out by advertising to the general public as willing to rent units to any member of the public who seeks it.

Fourth, Iron Gate does not provide an essential service. Nor does it possess a decisive advantage of bargaining strength. Riley had the freedom to take his business elsewhere if he disagreed with the rental agreement's provisions.

Fifth, the agreement and limiting provisions within it did not create an adhesion contract. Iron Gate did not exercise a superior bargaining power. It provided Riley with an opportunity to pay additional reasonable fees and protect against Iron Gate's negligence. Riley could have opted to purchase insurance and protect 100 percent of the cash value of his property, but he declined to do so.

Sixth, Riley had exclusive control over his storage unit. Per the agreement, Riley placed his own lock on the unit. Iron Gate could only enter the unit with written notice, in the case of an emergency, or if Riley defaulted. The rental agreement, therefore, gave Riley exclusive control of his unit and it did not place him under the control of Iron Gate.

The analysis shows that the limiting provisions and rental agreement as a whole weigh in favor of the majority of the factors outlined above. We, therefore, conclude that the provisions do not violate public policy for self-storage rental agreements.[4]

[4] Additionally, the Storage Act does not bar contractual provisions that limit liability and damages. *See* RCW 19.150.140. A recent amendment to the Storage Act confirms this point. The amendment states that if a condition in the rental agreement specifies a limit on the value of property that may be stored, that limit is the maximum value of the stored property for purposes of the facility's liability only. RCW 19.150.170; LAWS OF 2015, ch. 13 § 5. The accompanying senate bill report seems to acknowledge that such limitations in rental agreements have existed and that the amendment serves to clarify the purpose of such limits. *See* CP at 41-43 (Senate Bill Report 5009, Jan. 26, 2015).

2. THE LIMITING PROVISIONS ARE CONSPICUOUS

Riley next argues that he did not unambiguously agree to store only $5,000 worth of property in the storage unit. He argues that the first part of the applicable contract provision states that he can store property with "substantially less or no aggregate value," and that the second part is not, on its face, a limitation on the value of property that can be stored because it is a "refusal to agree that the property is worth more than $5,000." Br. of Appellant at 25. We disagree.

When read as a whole, the provision limiting the value of items stored in each unit is clear and unambiguous. It states, in relevant part, "It is understood and agreed that Occupant may store personal property with substantially less or no aggregate value and . . . the aggregate value of all suchpersonal (sic) property is, will be, or is expected to be, at or near $5,000." CP at 142.

As to the provision limiting damages and liability, Riley argues that the provision is so poorly worded and "hampered by grammatical and punctuation errors" that it is impossible to make sense of what is written. Br. of Appellant at 19. He argues that the damage limitation provision does not expressly exclude willful injury which Riley asserts is expressly excluded in the liability limitation provision. Riley also infers that the reference to "any cause whatsoever" in the damages provision is "general," and we should rely on the "specific term," negligence. Br. of Appellant at 20.

When read as a whole, the provision limiting damages is clear, despite the existing grammatical errors. It states that "In no event" will Iron Gate be liable in an amount in excess of $5,000 "arising from any cause whatsoever, Including, but not limited to" Iron Gate's active or passive acts, omissions, or negligence. CP at 143. The plain language clearly limits damages arising from any cause, including willful and fraudulent conduct. We reject Riley's arguments.

3. THE LIMITING PROVISIONS DO NOT INVOLVE LIABILITY FOR GROSS NEGLIGENCE

Riley seems to argue that Iron Gate's acts fell "greatly below the standard established by law for the protection of others." Br. of Appellant at 31-32. However, Riley provides no evidence that Iron Gate's conduct amounted to *gross* negligence. "Evidence of negligence is not evidence of gross negligence; to raise an issue of gross negligence, there must be substantial evidence of serious negligence." *Boyce*, 71 Wn. App. at 665. "'Gross negligence' is 'negligence substantially and appreciably greater than ordinary negligence.'" *Johnson v. Spokane to Sandpoint, LLC*, 176 Wn. App. 453, 460, 309 P.3d 528 (2013) (quoting *Nist v. Tudor*, 67 Wn.2d 322, 331, 407 P.2d 798 (1965)).

Riley read, understood, and signed the rental agreement with Iron Gate that unambiguously limited the value of his storage contents to approximately $5,000. However, Riley allegedly stored an excess of $1.5 million worth of property in the storage unit and opted to self-insure. Before the auction, Riley was in arrears for months and had been in arrears in the past. Iron Gate sent multiple notices alerting Riley that his account was past due. Iron Gate mailed a notice letter with an erroneous auction date and subsequently conducted an auction of Riley's property. Riley has not provided substantial evidence that Iron Gate's conduct amounted to gross negligence.

Riley also argues that Iron Gate was grossly negligent in failing to give proper lien and auction notices as required by the Storage Act. The evidence showed that Riley was in arrears for several months and that Iron Gate sent an auction notice with an erroneous auction date. After Iron Gate conducted the auction and was made aware of its mistake, it provided Riley with an opportunity to recover his property. Iron Gate also recovered much of Riley's property and stored it for free. Riley has not shown that Iron Gate acted in a grossly negligent manner and the record does not support such a conclusion.

We, therefore, conclude that there was no material issue of fact as to the limiting provisions and that they are enforceable because they are not contrary to public policy, they are conspicuous, and they do not involve liability for acts falling greatly below the gross negligence standard.

D. IRON GATE DID NOT INTENTIONALLY OR WILLFULLY VIOLATE THE STORAGE ACT

Riley further argues that Iron Gate intentionally violated the Storage Act and cannot contractually exculpate itself from its intentional acts. Iron Gate argues that the Storage Act does not bar provisions that limit liability or damages, nor do the provisions violate public policy. It argues that Riley cannot show willful misconduct and the provisions should be enforced. We agree with Iron Gate.

RCW 19.150.060(c) states that an occupant's property may be sold to satisfy a lien after a specified date which is "not less than fourteen days" from the last date of sending the final lien sale of notice. It is undisputed that Iron Gate did not give Riley 14 days' notice. The record also supports Iron Gate's argument that the notice violation was a mistake and that Iron Gate took steps to remedy the mistake.

Riley, however, contends that Iron Gate intentionally violated the notice requirement. He argues that because Iron Gate elected to begin the foreclosure and auction process against his property despite having the option to pursue other remedies such as a suit for money damages, the conduct "can only be described as a willful choice and an intentional act." Br. of Appellant at 14. He contends that volitional acts are included in the definition of willful. However, volition alone is insufficient to support a finding of "willfulness." "Willful" requires a showing of actual intent to harm. *Zellmer v. Zellmer*, 164 Wn.2d 147, 155 n.2, 188 P.3d 497 (2008). The evidence does

not show that Iron Gate's conduct was willful. While the conduct was "volitional" because Iron Gate acted upon their mistake, a mistake in and of itself is insufficient to show willfulness or actual intent to harm. We conclude that no genuine dispute of material fact exists that Iron Gate did not intentionally or willfully violate the Storage Act.

Riley argues that it is against public policy for the limitation provisions to apply to Storage Act claims. As discussed above, the limiting provisions in the agreement are enforceable and not contrary to public policy. Riley does not provide evidence showing how the limiting provisions are contrary to public policy under the Storage Act. Nor is there a provision in the Storage Act barring contractual provisions limiting liability and damages. We conclude that it is not contrary to public policy for such provisions to apply to Storage Act claims.

E. THE LIMITING PROVISIONS BAR RILEY'S CONVERSION CLAIM[5]

Riley next argues that Iron Gate committed conversion when it intentionally seized and sold his property. He argues that to recover for conversion, he need only show Iron Gate intended to sell the property and need not show motive or purpose. He further argues that liability should not be exculpated when conversion occurred due to Iron Gate's volitional act. We disagree.

[5] Riley argues his conversion claim at length under various theories. He argues that the provision limiting liability excludes intentional torts because "willful" implies only "volition action," and because "willful" is used interchangeably with "intentional." Br. of Appellant at 23. He contends that the "willful injury" is selling Riley's unit contents, and the "willful violation of law" is engaging in notice procedures that resulted in the sale of his property in violation of the Storage Act. Br. of Appellant at 22. He also argues that the provision does not pertain to intentional torts because it does not specify that intentional torts are excluded. However, the limiting provision is clear: liability is barred from "any cause whatsoever," except fraud and willful misconduct. CP at 143.

Riley's conversion claim fails because it is barred by the contractual provision limiting liability. Per the agreement, liability attaches only when damage or loss arises out of Iron Gate's fraudulent or willful misconduct. As such, the limitation provision is enforceable for torts involving deliberate or volitional conduct so long as there is no evidence of fraudulent or willful misconduct. Riley has not presented evidence showing that Iron Gate's conduct was willful misconduct or fraudulent. Because the limitation provisions are enforceable against such claims, we conclude that there are no genuine issues of material fact as to whether Riley's conversion claim survives.

F. THE LIMITATION PROVISIONS VIOLATE PUBLIC POLICY AS TO RILEY'S CPA CLAIM

Riley argues that Iron Gate's lien notices and rental agreement violate the CPA and that the agreement's limiting provisions disclaiming liability under the CPA are void under public policy. We conclude that the limitation provisions violate public policy because they seriously impair Riley from asserting a CPA claim, contrary to the purpose of the CPA's private right of action.

The CPA prohibits "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." RCW 19.86.020. The purpose of the CPA is to complement the body of federal law governing restraints of trade, unfair competition, and unfair, deceptive, and fraudulent acts in order to protect the public and foster fair and honest competition. RCW 19.86.920. To achieve its purpose, the CPA is "liberally construed that its beneficial purposes may be served." RCW 19.86.920.

The CPA was amended to provide a private right of action, encouraging individual citizens to bring suit to enforce the CPA. *Dix v. ICT Grp., Inc.*, 160 Wn.2d 826, 836, 161 P.3d 1016 (2007). "The private right of action to enforce RCW 19.86.020 is more than a means for vindicating the

rights of the individual plaintiff" as the plaintiff must show that the challenged conduct affects the public interest. *Dix*, 160 Wn.2d at 837.

The CPA encourages individuals to fight restraints of trade, unfair competition, and unfair, deceptive, and fraudulent conduct. *Dix*, 160 Wn.2d at 840. Barring Riley from bringing a CPA claim due to the limitation provisions of his rental agreement contradicts the purpose of the CPA's private right of action. Further, CPA treble damages are capped at $25,000[6] while the limitation provisions cap Riley's damages to $5,000 as to all claims. Without deciding whether or not Riley's CPA claim survives summary judgment, we, therefore, conclude that a limitation provision that seriously impairs a plaintiff from asserting a private CPA claim violates public policy.

G. THE LIMITATION PROVISIONS ARE NOT UNCONSCIONABLE

Riley argues that the agreement's exculpatory provisions are void because limiting liability for intentional and wrongful seizure and sale of his property worth over $1.5 million is unconscionable. We disagree.

1. PROCEDURAL UNCONSCIONABILITY

Procedural unconscionability requires evidence of blatant unfairness in the bargaining process and a lack of meaningful choice. *Torgerson*, 166 Wn.2d at 518. Procedural unconscionability is determined in light of the totality of the circumstances, including (1) the manner in which the parties entered into the contract, (2) whether the parties had a reasonable opportunity to understand the terms, and (3) whether the terms were hidden in a maze of fine print. *Yakima County (W. Valley) Fire Prot. Dist. No. 12 v. City of Yakima*, 122 Wn.2d 371, 391, 858 P.2d 245 (1993) (citing *Schroeder v. Fageol Motors, Inc.*, 86 Wn.2d 256, 260, 544 P.2d 20 (1975)).

[6] The cap for CPA treble damages is $25,000. RCW 19.86.090. Therefore, contrary to Iron Gate's argument and the trial court's finding, the $23,000 initially tendered to Riley is not the same as an award of damages equal to or greater than what Riley could have potentially recovered at trial.

These factors should not be applied mechanically without regard to whether in truth a meaningful choice existed. *Torgerson*, 166 Wn.2d at 519.

Riley entered into the rental agreement with Iron Gate by choice and had a reasonable opportunity to understand the terms. Riley seems to argue that he did not have such an opportunity because he signed the agreement after a night of driving from California to Washington. This argument is meritless. Riley entered into the agreement with Iron Gate in 2003 and did not raise any issue as to its clarity or meaning until 2015. Riley testified that he understood the agreement. He placed his initials beside each limiting provision and signed the agreement, confirming that he understood its terms.

Further, the terms of the agreement were clear. As both parties acknowledged, the rental agreement contained numerous typographical errors. However, there was no evidence presented showing that the typographical errors confused the meaning of the contract or the provisions limiting liability, the value of the unit's contents, or recoverable damages. The limitation provisions, especially when read as a whole, were unambiguous in its meaning. We, therefore, conclude that the trial court did not err because there was no genuine issue of material fact regarding procedural unconscionability.

2. SUBSTANTIVE UNCONSCIONABILITY

Substantive unconscionability involves cases where a clause or term in the contract is one-sided or overly harsh. *Torgerson*, 166 Wn.2d at 519. However, such unfairness must truly stand out; "shocking to the conscience," "monstrously harsh," and "exceedingly calloused" are terms sometimes used to describe substantive unconscionability. *Torgerson*, 166 Wn.2d at 519 (internal citations omitted).

Riley contends that the agreement's exculpatory terms were "monstrously harsh" and "shocking" because it allowed Iron Gate to auction an alleged $1.5 million of his property without following correct procedure, and because liability was limited to $5,000. Br. of Appellant at 44-45. Riley provides no evidence to support this contention. The agreement stated that the contents of his unit was expected to be valued at approximately $5,000. Further, the limitation on damages was clear and not overly harsh when it capped damages at $5,000—the total dollar amount Riley contractually agreed to keep in the unit. Riley agreed to the value limitation when he initialed his name beside the provision. Iron Gate relied on Riley's representation that the contents of his unit were valued at approximately $5,000. When read as a whole, the limitation provisions were not one-sided or overly harsh. We, therefore, conclude that the trial court did not err because there was no genuine issue of material fact as to substantive unconscionability.

H. THE RENTAL AGREEMENT IS NOT AN ADHESION CONTRACT

Riley argues that the agreement is an adhesion contract because it does not contemplate insuring against illegal seizure and sale of storage unit contents. We disagree.

An adhesion contract exists if (1) the "'contract is a standard form printed contract,'" (2) the contract is "'prepared by one party and submitted to the other on a "take it or leave it" basis,'" and (3) there was "'no true equality of bargaining power between the parties.'" *Zuver v. Airtouch Commc's, Inc.*, 153 Wn.2d 293, 304, 103 P.3d 753 (2004) (quoting *Yakima County (W. Valley Fire Prot. Dist. No. 12*, 122 Wn.2d at 393) (quoting *Standard Oil Co. of California v. Perkins*, 347 F.2d 379. 383 n.5 (9th Cir. 1965))).

Iron Gate prepared the rental agreement, but the agreement gave Riley the option of purchasing insurance. *See Eifler v. Shurgard Capital Mgmt. Grp.*, 71 Wn. App. 684, 694, 861 P.2d 1071 (1993) (limiting provision did not violate public policy because plaintiff was given the

opportunity to purchase insurance). Riley agreed to the liability and damage limitations that were set out in the agreement. To offset the limitation provisions and protect his property, he was also provided an opportunity to purchase insurance through Iron Gate. Riley chose to self-insure and assume the risk instead. Riley also had the choice to take his business elsewhere if he disagreed with the agreement. We, therefore, conclude that the agreement was not an adhesion contract, and the trial court did not err because there was no genuine issue of material fact.

II. MOTION FOR RECONSIDERATION

Lastly, Riley assigns error to the trial court's order denying his motion for reconsideration. We do not consider the issue because it is inadequately briefed.

Under RAP 10.3(a)(4) and (6), an appellant's brief must include "assignments of error, arguments supporting the issues presented for review, and citations to legal authority" and references to relevant parts of the record. *Bercier v. Kiga*, 127 Wn. App. 809, 824, 103 P.3d 232 (2004). If an appellant's brief does not include argument or authority to support its assignment of error, the assignment of error is waived. *Smith v. King*, 106 Wn.2d 443, 451-52, 722 P.2d 796 (1986). "We need not consider arguments that are not developed in the briefs and for which a party has not cited authority." *Kiga*, 127 Wn. App. at 824.

Riley does not present any argument as to how the trial court abused its discretion when it denied his motion for reconsideration. Presumably, Riley is objecting to the court's decision for the same reasons he objects to the court's partial summary judgment ruling. However, we do not consider issues that are unsupported by argument and legal authority. Because Riley waived the issue by providing no argument or authority to support his assignment of error, we do not consider the issue.

Because we uphold the cap on damages to all claims, except as to the CPA claim, we affirm in part and reverse in part.

Melnick, J.

We concur:

Johanson, J.

Maxa, A.C.J.

EXHIBIT 1

RENTAL AGREEMENT

PAY ON LINE: WWW.IRONGATESTORAGE.COM

Lease Number: 2035 Access Number: 5691164

THIS RENTAL AGREEMENT is executed in duplicate on December 1, 2003 by and between Iron Gate Self Storage the Owner ("Operator") whose business name and address is set forth below, 802 NE 112th Ave Vancouver WA 98684 and theTenant Larry Riley-(hereinafter referred to as the "Occupant") whose residence and alternate addresses are set forth below, for the purpose of leasing or renting certain space as described and with the express understanding and agreement that **no bailment or deposit of goods for safekeeping is intended or created hereunder.**

It is agreed by and between Operator and Occupant as follows:

1 **DESCRIPTION OF PREMISES.** Operator leases to Occupant and Occupant leases from Operator Enclosed Lease Space No. 028-(approximately 30 x 12) and/or Parking Leased SpaceNo. 028 (hereinafter the "Premises") located at the below referenced address of Operator and included in a larger facility at such address containing similar leased real property and common areas for the use of Occupant and other occupants (the entire facility is hereinafter referred to as the "Project"). **Occupant has examined the Premises and the Project and, by placing his INITIALS HERE LDR acknowledges and agrees that the Premises and the common areas of the Project are satisfactory for all purposes, including the safety and security thereof, for which Occupant shall use the Premises or the common areas of the Project.** Occupant shall have access to the Premises and common areas of the Project only during such hours and days as are regularly posted at the Project. **BY PLACING HIS INITIALS HERE LDR OCCUPANT ACKNOWLEDGES AND AGREES THAT OCCUPANT'S PERSONAL PROPERTY STORED ON OR ABOUT THE PREMISES WILL BE SUBJECT TO A CLAIM OF LIEN IN FAVOR OF OPERATOR FROM THE DATE RENT IS DUE AND UNPAID, FOR RENT, LABOR OR OTHER CHARGES AND FOR EXPENSES REASONABLY INCURRED IN THE SALE OF SUCH PERSONAL PROPERTY. OCCUPANT'S PERSONAL PROPERTY IN, ON OR ABOUT THE PREMISES MAY BE SOLD TO SATISFY SUCH LIEN IF OCCUPANT IS IN DEFAULT UNDER THIS AGREEMENT. IN ADDITION, AFTER THE LONGER OF EITHER THE MINIMUM PERIOD ALLOWED BY LAW OR FIVE (5) DAYS IN WHICH OCCUPANT IS IN DEFAULT UNDER THIS RENTAL AGREEMENT, OPERATOR MAY DENY OCCUPANT ACCESS TO THE PREMISES. THIS REMEDY IS CUMULATIVE VOTH AND IN ADDITION TO EVERY OTHER REMEDY GIVEN HEREUNDER OR NOW OR HEREAFTER EXITING AT LAW OR IN EQUITY.**

2. **TERM:** The term of this Rental agreement shall commence as of the date first above written and shall continue from the first day of the month immediately following on a LDR (OCCUPANT'S INITIALS) month-to-month tenancy, or _____(OCCUPANT'S INITIALS) for a period of one year and thereafter on a month-to-month tenancy.

3. **RENT:** Occupant shall pay Operator as a monthly rent, without deduction, prior notice, demand or billing statement, the sum of $195.00 plus additional monthly rent of $ 195.00 due pursuant to paragraph 12, together with sales tax of _____(if applicable) per month in advance on the first day of each month; provided however, that with respect to a term of one year the Occupant may, by placing his Initials here _____ prepay eleven months' rent on the commencement date and there shall be no rental charge for the twelfth (12th) month of the first year. If the terms of this Rental Agreement shall commence other than on the first day of a month, Occupant shall owe a pro rate portion of the first month's rent. However, Occupant shall pay, in advance, at least one full month's rent, and Occupant understands and agrees that under no circumstances will occupant be entitled to a refund of the first full month's rent. Any rent paid in excess of that owed for the first month shall be credited to rent payable for the month immediately following. With respect to any month-to-month tenancy, the monthly rent may be adjusted by Operator effective the month following written notice by Operator to Occupant specifying such adjustment, which such notice shall be given not less than thirty (30) days prior to the first day of the month for which the adjustment shall be effective. Any such adjustment in the monthly rent shall not otherwise affect the terms of this Rental Agreement and all other terms of this rental Agreement shall remain in full force and effect.

4. **FEES AND DEPOSITS.**

(a) Concurrently with the execution of this Rental Agreement, Occupant shall pay to Operator $5.00 as a nonrefundable new account administration fee.

(b) All rent shall be paid in advance of the first day of each month and in the event Occupant shall fail to pay the rent by the 10th day of the month, Occupant shall pay, in addition to any other amounts due, a late fee of $10.00.

(c) Concurrently with the execution hereof, Occupant shall deposit with Operator $10.00 to secure Occupant's performance pursuant to the provisions of this Rental Agreement. Operator may comingle the deposit with the funds in its general accounts, and may, at Operators election, apply the deposit to any amounts due and unpaid by Occupant hereunder. The balance of the deposit shall be returned to Occupant, without interest, within two (2) weeks after the termination of this Rental Agreement providing that Occupant is not in default hereunder.

5. **USES AND COMPLIANCE WITH LAW.** Occupant shall not store on the Promises personal property in or to which any other person has any right, title or interest. By placing his **INITIALS HERE LDR Occupant states that there are** NO LIEN OTHER THAN OPERATOR'S UPON THE PROPERTY STORED or to be stored except as follows:

(Name_____(address)_____It is understood and agreed that Occupant may store personal property with substantially less or no aggregate value and nothing herein contained shall constitute or evidence, any agreement or administration by Operator that the aggregate value of all suchpersonal property is, will be, or is expected to be, at or near $5,000. **It Is specifically understood and agreed that Operator need not be concerned with the kind, quality, or value of personal property or other goods stored by Occupant in or about the Premises pursuant to this Rental Agreement.** Occupant shall not store any improperly packaged food or perishable goods, flammable materials, explosives or other inherently dangerous material, nor perform any welding on the Premises or in the Project. Occupant shall not store any personal property on the Premises which would result in the violation of any law of governmental authority and Occupant shall comply with all laws, rules, regulations and ordinances of any and all governmental authorities concerning the Promises or the use thereof. Occupant shall not use the Promises in any manner that will constitute waste, nuisance, or unreasonable annoyance to other occupants in the Project. Occupant acknowledges that the Premises may be used for storage only, and that use of the Premises for the conduct of business or human or animal habitation is specifically prohibited.

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6. INSURANCE. OCCUPANT, AT OCCUPANT'S SOLE EXPENSE, SHALL MAINTAIN ON ALL PERSONAL PROPERTY, IN, ON OR ABOUT THE PREMISES, TO THE EXTENT OF ATLEAST 100% OF THE ACTUAL CASH VALUE OF SUCH PERSONAL PROPERTY, A POLICY OR POLICIES OF INSURANCE COVERING DAMAGE BY FIRE, EXTENDED COVERAGE PERILS, VANDALISM AND BURGLARY. Occupant may satisfy the Insurance requirement for personal property stored In the enclosed Space by electing coverage under the Insurance plan described In the Insurance brochure made available by Operator, or by obtatning the required coverage from any other Insurance 90nWany of Occupart's choice, In an amount equal to the value of the goods stored by Occupant In the Enclosed Space. Insurance coverage for goods stored In the Parking Space must be obtained from an Insurance company other than the one named In the brochure. To the extent Occupant does not maintain Insurance for the full value of the personal property stored In the Enclosed Space or Parking Space, Occupant shall be deemed to have "self-insured". To the extent that Occupant has "self-insured", Occupant shall, beat all risk of loss damage. As Initialled below, Occupant agrees to obtain Insurance coverage for 100% of the actual cash value of Occupants property stored on or In the Promises or to be "self insured". OCCUPANT'S PERSONAL PROPERTY STORED IN OPERATOR'S LEASED SPACE OR ON OPERATORS PROJECT IS NOT INSURED BY THE OPERATOR AGAINST LOSS OR DAMAGE.

(OCCUPANT'S INITIALS - Initial only one)

_____ A. Occupant will obtain the Insurance policy described In the brochure provided by Operator.

_____ B. Occupant will obtain insurance coverage from a company other than the one named In the insurance brochure provided by Operator.

LDR C. Occupant elects to "self-insure" (personally assume all risk of loss or damage).

Occupant hereby releases Operator and Operators Agents and authorized representatives and employees (hereinafter collectively referred to as "Operators Agents") from any and all claims for damage or loss to the personal property in, on or about the Premises, that are caused by or result from perils that are, or would be, covered under required insurance policy and hereby waives any and all rights or recovery against Operator and Operators Agents in connection with any damage which is or would be covered by any such insurance policy. While Information may be made available to Occupant with respect to insurance, Occupant *understands and* agrees that Operator and operator's Agents are not Insurers, and do not assist and have not assisted Occupant in the explanation of coverage or in the making of claims under any Insurance policy. Nothing in this paragraph shall limit or reduce the rights and benefits of Operator under paragraph 7. By placing his INITIALS HERE LDR Occupant acknowledges that he has read and understands the provisions of this paragraph 6.

7. LIMITATION OF OPERATOR'S LIABILITY; INDEMNITY. Operator and Operators Agent shall not be liable to Occupant for any damage or lose to any person, Occupant or any property stored in, on or about the Premises or the Project, arising from any cause whatsoever, including, but not limited to, theft, fire, mysterious disappearance, rodents, acts of God or the active or passive acts, omissions or negligence of Operator or Operators Agents; except that Operator and Operator's Agents, as the case may be, may, except as otherwise provided in paragraph 6, be liable to Occupant for damage of loss to Occupant or Occupanties Property resulting from Operator's fraud, willful injury or willful violation of law. Occupant shall indemnify and hold Operator and Operator's Agents harmless from any and all damage, loss, or expense arising out of or in connection with any damage to any person or property occurring In, on or about the Premises arising in any way out of Occupants use of Premises, whether occasioned by Operator or Operators Agents' active or passive acts, omissions or negligence or otherwise, other than damage, loss, orexpense In connection with Operator or Operator's Agents' fraud, willful injury or willful violation of law. Notwithstanding anything contained in this Rental Agreement, In no event shall Operator or Operator's Agents be liable to Occupant In an amount In excess of $5,000 for any damage or lose to any person, Occupant or any property stored in, on or about the Premises or the Project arising from any cause whatsoever, Including, but not limited to, Operators Agents' active of passive acts, omissions or negligence. By placing his INITIALS HERE LDR Occupant acknowledges that he has read, understands and agrees to the provisions of this paragraph 7.

8. INCORPORATION OF PROVISIONS ON PAGES THREE AND FOUR. By placing his INITIALS HERE LDR Occupant acknowledges that he has read, is familiar with and agrees to all of the provisions printed on pages three and four of this Rental Agreement, and Operator and Occupant agree that all such provisions constitute a material part of this Rental Agreement and are hereby Incorporated by reference. IN WITNESS WHEREOF, the parties hereto have executed this Rental Agreement the day and year first above written.

OCCUPANT: _____
Signature

OPERATORS LIEN LAW(S) REFERENCES:
OPERATOR

_____

By: Iron Gate Self Storage
802 NE 112th Ave
Vancouver, WA 98684

Name: Larry Riley
Street: 13105 NW 8th ave unit b
City: Vancouver State: WA Zipcode:
RESIDENCE BUSINESS
Phone: 530-218-2717 Phone:

SS# 000-00-0000 Drivers Lic #

ALTERNATE ADDRESS (If alternative information is refused, occupant will please sign here _____
Name_____ Relationship _____

Street: _____

City: _____ State: _____ Zip: _____
Residence Business
Phone ( ) _____ ( ) _____

Received By:
Mike . Nichols Manager

_____
Signature

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S. DEFAULT OPERATOR'S REMEDIES AND LIEN:
If Occupant shall fail to pay timely any rent or other charges required herein to be paid or shall fail or refuse to perform timely any of the covenants, conditions or terms of this Rental Agreement. Occupant shall be conclusively deemed in default under this Rental Agreement. OCCUPANTS PERSONAL PROPERTY IN OR ABOUT THE PREMISES WILL BE SUBJECT TO A CLAIM OF LIEN IN FAVOR OF OPERATOR FROM THE DATE RENT IS DUE AND UNPAID FOR RENT, LABOR OR OTHER CHARGES AND FOR EXPENSES REASONABLY INCURRED IN THE SALE OF SUCH PERSONAL PROPERTY OCCUPANTS PERSONAL PROPERTY IN OR ABOUT THE PREMISES MAY BE SOLD TO SATISFY SUCH LIEN IF OCCUPANT IS IN DEFAULT UNDER THIS RENTAL AGREEMENT IN ADDITION, AFTER THE LONGER OF EITHER THE MINIMUM PERIOD ALLOWED BY LAW OR TEN (10) DAYS IN WHICH OCCUPANT IS IN DEFAULT UNDER THIS RENTAL AGREEMENT, OPERATOR MAY DENY OCCUPANT ACCESS TO THE PREMISES. Operator may also enter the premises and remove Occupants personal property within it to a safe place. This remedy is cumulative with and in addition to every other remedy given hereunder, or now or hereafter exiting at law or in equity. Acceptance by Operator of payment of less than all amounts In default shall not constitute a cure such default nor a waiver by Operator prior to termination of the Rental Agreement unless Operator executes a written acknowledgment thereof. This Rental Agreement specifically incorporates by reference the provisions of applicable state and local laws) (if any) relating to Owner's and/or Operator's lien for rental charges at a self-storage facility. Applicable lien law references are cited next to Operator's address on front page.

10.ABANDONMENT
Without limiting the right of Operator to conclude for other reasons that Occupant has actually abandoned the Premises and the Property located in or on the Premises, Occupant agrees that Operator may conclusively deem an abandonment by Occupant of the Premises and all Property within the fifteen (15) days following Operators written notice of belief of abandonment, which notice may be given and shall be deemed to be effective as provided with respect to the giving of notice as provided in Paragraph 19. If any personal property of Occupant shall remain in or on the Premises or at the Project after the expiration or termination of this Rental Agreement (other than the termination of this Rental Agreement while a default by Occupant exists) shall be considered abandoned at the option of Operator and If abandoned, Operator may sell, destroy or otherwise dispose of Occupants property in order to satisfy Operators lien.

11. ENTIRE AGREEMENT
There are no representations, warranties, or agreements by or between the parties which are not fully set forth herein and no representative of Operator or Operators agents are authorized to make any representations, warranties or agreements other then as expressly set forth herein.

12. USE OF ELECTRICITY
In the event there is an electrical outlet within the rented Premises, the Occupant is cautioned that power to such electrical outlet may be turned off at the option of the Operator, and that the Operator assumes no liability to Occupant or Occupant's property resulting from the failure or shut off of the electrical power supply to the Premises. Accordingly, Occupant Is REQUIRED to turn off all lights and disconnect any electrical appliances before leaving the rented Premises and in the event they are not turned off, Occupant shall pay as additional rent a charge of $50.00 per month. If continuous and/or intermittent electrical services Is desired and available for powered tools and the like, Occupant shall pay the "additional monthly rent shown in Paragraph 3 above in addition to the basic monthly rent payable as also provided for in Paragraph 3 above.

13. ALTERATIONS:
Occupant shall not make or allow any alterations of any kind or description whatsoever to the Premises without, In each instance, the prior written consent of the Operator.

14. LOCK:
Occupant shall provide, at Occupants own expense, a lock for the Premises which Occupant, In Occupant's sole discretion, deems sufficient to secure the Premises. Occupant shall not provide Operator or Operators agents with a key and/or combination to Occupant's lock.

15. RIGHT TO ENTER, INSPECT AND REPAIR PREMISES: Occupant shall grant Operator, Operator's agents or the representatives of any governmental authority including police and fire officials, access to the Premises upon three (3) days prior written notice to Occupant. In the event Occupant shall not grant access to the Premises as required or In the event of any emergency or upon default of any of Occupants obligations under this Rental Agreement, Operator, Operators agents or the representatives of any governmental authority shall have the right to remove Occupant's lock and enter the Premises for the purpose of examining the Premises or the contents thereof or for the purpose of making repairs or alterations to the Premises and taking such other action as may be necessary or appropriate to preserve the Premises or to comply with applicable law or enforce any of Operators rights. In the event of any damage or injury to the Premises or the Project arising from the active or passive RCW omissions or negligence of Occupant, all expenses reasonably incurred by Operator to repair or restore the Premises or Project shall be paid by Occupant as additional rent and shall be due upon demand by Operator.

16. NO WARRANTIES:
Operator hereby disclaims any implied or express warranties, guarantees or representations of the nature, condition, safety or as security, of the Premises and the Project and Occupant hereby acknowledges. as provided in paragraph 1 above, that Occupant has inspected the Premises and hereby acknowledges and agrees that Operator does not represent or guarantee the safety orsecturity of the Premises orof any property stored therein. This Rental Agreement sets forth the entire agreement to the parties with respect to the subject matter hereof and supersedes all prior agreements or understandings with respect thereto.

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17. **TERMINATION:**
This Rental Agreement shall terminate at the expiration of any term of this Rental Agreement by the party desiring to terminate this Rental Agreement giving written notice by certified or registered mail to the other party of such partys intention to terminate not less than fifteen (15) days before expiration of the ten. Further, this Rental Agreement may, at the option of the Operator be terminated upon any default by Occupant under the terms of this Rental Agreement or the abandonment of the Premises by Occupant or by Operators acceptance of Occupants oral offer to terminate given not less than two (2) days before the proposed date of termination.

18. **CONDITIONS OF PREMISES UPON TERMINATION:** Upon termination of this Rental Agreement, Occupant shall remove all Occupant's personal property from the Premises unless such personal property is subject to Operators lien rights pursuant to Paragraph 9 above and shall immediately deliver possession of the Premises to Operator in the same condition as delivered to Occupant on the commencement due of this Rental Agreement, reasonable wear and tear excepted.

19. **NOTICES:**
Except as otherwise expressly provided in this Rental Agreement, any written notices or demands required or permitted to be given under the terms of this Rental Agreement may be personally served or may be served by first class mail deposited in the United States mail with postage thereon fully prepaid and addresses to the party so to be served at the address of such party provided for in this Rental Agreement. Service of any such notice or demand shall be deemed complete on the date delivered, or if mailed, shall be deemed complete on the date of deposit in the United States mail, with postage thereof fully prepaid and addressed in accordance with the provisions hereof and without regard to Occupant's actual receipt thereof.

20. **NOTIFICATION OF CHANGE OF ADDRESS:**
In the event Occupant shall change Occupants place of residence or alternate name and address as set forth on this Rental Agreement, Occupant shall give Operator written notice of such change within ten (10) days of the change specifying Occupant's current residence and aftemate name, address and telephone numbers. Failure to so notify Operator shall constitute a waiver by Occupant of any defense based on failure to receive any notice.

21. **ASSIGNMENT**
Occupant shall not assign or sublease the Premises of any portion thereof without in each instance obtaining the prior written consent of Operator.

22. **SUCCESSION:**
All of the provisions of this Rental Agreement shall apply to bind and be obligatory upon the heirs, executors, administrators, representatives, successors and assigns of the parties hereto.

23. **CONSTRUCTION:**
Whenever possible each provision of this Rental Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Rental Agreement shall be invalid or prohibited under such applicable law, such provision shall be ineffective only In the extent of such prohibition or invalidity without invalidating the remainder of such provision orthe remaining provisions of this Rental Agreement.

24. TIME:
Time is of the essence of this Rental Agreement.

25. **RULES AND REGULATIONS:**
The rules and regulations posted in a conspicuous place at the project are made a pad of this Rental Agreement and Occupant shall comply at all times with such rules and regulations. Operator shall have the right from time to time to promulgate amendments and additional rules and regulations for the safety, care and cleantiness of the Premises, Project and all common areas, or for the preservation of good order and, upon the posting of any such amendments or additions in a conspicuous place at the project, they shall become a pad of this Rental Agreement.

26. **ATTORNEY'S FEES:**
Occupant agrees to pay all cost, charges and expenses, including reasonable attorneys fees, incurred by Operator in connection with the collection of rent, the enforcement of any rights underthis Rental Agreement or any litigation or contFoversy arising from or in connection with this Rental Agreement. All such costs, charges and expenses shall be made a pad of any lien claimed by or judgement rendered for Operator. If no action in instituted by Operator such cost, charges and expenses shall be paid by Occupant Wong with any other claims by Operator.

27. Occupant agrees that operator may provide notice of any change in any of the foregoing by posting a notice of such change within the project.

END OF RENTAL AGREEMENT
Make check payable to IRONGATE STORAGE

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ADDENDUM TO RENTAL AGREEMENT

Iron Gate Self Storage
802 NE 112th Ave
Vancouver, WA 98684
360-892-8800

1747

Unit # 028 Unit Size 30 X 12 Gate Access # ~~5691164~~
Contract # 2035

Welcome! The following information is for your reference. It contains some important suggestions and pertinent information about the policies of this self storage facility.

1. **Your fee is $195.00 and is due on the first (1st) of each month.**
2. **We will not send you a bill.** Please mail your payment or bring it into the office. A payment slot has been provided for your convenience.
3. **If we have not received your payment by day 6 of the month, your gate access will be denied.** However, we will not charge a late fee and overlock your unit until day 11 of the month.
4. **A partial payment will not stop fees or official procedures.** Any agreement between tenant and management to extend payment dates or defer sale of goods must be in writing and signed by both management and tenant to be binding.
5. **A $25.00 fee is automatically charged for all returned checks as well as a $10.00 late fee.** All future payments must be made by money order.
6. **We require that tenant provide his/her own insurance coverage or self insure, and that tenant will be personally responsible for any loss.**
7. Iron Gate Storage is a commercial business renting space and is not a bailiff or warehousemen.
8. Do not use the rental unit for anything **but DEAD STORAGE.** Do not store any flammable, explosive or illicit materials. The unit is to be used for storage only.
9. Tenant agrees to reimburse Iron Gate Storage for the cost of disposal of articles left behind in unit in excess of $10.00 cleaning fee. Tenant agrees to give managers a **10 DAY NOTICE PRIOR TO VACATING.** Failure to give notice will result in a $10.00 fee.
10. The storage unit must broom clean, emptied, in good condition - subject only to wear and tear - and ready to re-rent. Upon managements inspection and approval of units condition, cleaning fee shall be returned.
11. **Tenant's lock must be removed upon termination of occupancy. Failure to remove lock will result in your being charged the next month's rental and late fees. Any units found unlocked, will be considered to have been abandoned, and contents will be disposed of.**
12. Tenant understands that, if the rental agreement commences after the 15th of the month, both the prorated rental amount for the first partial month, and payment for the next full month, is required, and the **these amounts are not refundable.**
13. If tenant vacates on or before the 10th of the month, rent will be prorated. If tenant vacates after the 10th of the month, a full month's rent payment will be required.
14. Upon move out, prepaid rents will be refunded for any **full** months not used.
15. Gate hours are from 7 (A.M.) to 9 (P.M.), seven days a week. **The gate will not open after 9 (P.M.), so please be out on time.**
16. Office hours are from 9 (A.M.) to 6 (P.M.), Monday through Saturday.
    Office hours are from 9 (A.M.) to 5 (PM) Sunday
    Management is on the property after hours for security reasons only.
17. **Only one lock is allowed per door latch.** If more than one lock is found, you may be subject to a $10.00 cut lock fee for the removal of that lock.
18. **Do not follow someone through the gate without first putting in your access code.** The gate may close on you or you may not be able to exit. The code is required to disarm the alarm on your unit.
19. **Please keep us updated of any address changes and/or phone number changes.** Until we are notified in writing with your signature, the only valid address and telephone number present is on the lease.
20. Please leave aisles clear and do not block another tenant's door.
21. We will strictly enforce all policies and conditions in our contract. We do not make exceptions!

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COLLECTION PROCEDURES AUTHORIZED BY RCW 19.150:

If rent remains unpaid for 10 days, tenant will continue to be locked out and a $10.00 late fee assessed.

Pre Lien Notice

If rent remains unpaid for 20 days, tenant's right to use the storage space can be terminated, and a preliminary lien notification sent. Tenant's account will be assessed an additional $20.00 fee.

Attachment of Lien

If rent remains unpaid for 45 days, a lien will be attached to the contents of the storage space. The lock can be cut, and the unit inventoried. A certified letter will be sent. A $25.00 lien fee will be assessed to tenant's account.

Notice of Auction

If the rent is upaid for 56 days, we will set the auction date for sale/disposal of your goods, and will notify you by letter. A $50.00 auction/disposal fee will be assessed to your account.

Disposal of Goods

If the goods are deemed to be worth over $300.00, the unit may be auctioned. **Tenant may not bid on unit at auction.** If the goods are determined to be worth less than $300.00, we may dispose of the contents without notification to tenant. Any costs for disposal will be added to tenants account.

Thank you! We appreciate your business and look forward to your having a pleasant stay with us. If we can be of further help, please let us know.

Cleaning Fee: $10.00 **Admin Fee: $5.00** **Paid Through Date:** _____

Tenant Signature 12/01/03 000-00-0000

Date SSN

Other Access Authorized

Manager(s) Signature

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EXHIBIT 2

5. **USES AND COMPLIANCE WITH LAW.** Occupant shall not store on the Promises personal property in or to which any other person has any right, title, or interest. By placing his INITIALS HERE_____Occupant states that there are NO LIEN OTHER THAN OPERATOR"S UPON THE PROPERTY STORED or to be stored except as Follows:

(Name_____(address)_____

It is understood and agreed that Occupant may store personal property with substantially less or no aggregate value and nothing herein contained shall constitute or evidence, any agreement or administration by Operator that the aggregate value of all suchpersonal property is, will be, or is expected to be, at or near $5,000. **It is specifically understood and agreed that Operator need not be concerned with the kind, quality, or value of personal property or other goods stored by Occupant in or about the Premises pursuant to this Rental Agreement. ...**

6. INSURANCE OCCUPANT, AT OCCUPANT'S SOLE EXPENSE SHALL MAINTAIN ON ALL PERSONAL PROPERTY, IN, ON OR ABOUT THE PREMISES, TO THE EXTENT OF ATLEAST 100% OF ACTUAL CASH VALUE OF SUCH PERSONAL PROPERTY, A POLICY OR POLICIES OF INSURANCE COVERING DAMAGE BY FIRE, EXTENDED COVERAGE PERILS, VANDALISM AND BURGLARY. Occupant may satisfy the Insurance requirement for personal property stored In the enclosed Space by electing coverage from any other Insurance plan described In the Insurance brochure made available by Operator, or by obtatning the required coverage from any other Insurance 90nWany of Occupart's choice, In an

amount equal to the value of the goods stored by Occupant In the Enclosed Space. Insurance coverage for goods stored In the Parking Space must be obtained from an Insurance Company other than the one named In the brochure. To the extent Occupant does not maintain Insurance for the full value of the personal property stored In the Enclosed Space or Parking Space. Occupant shall be deemed to have "self insured". To the extent that Occupant has "self-insured". Occupant shall, beat all risks of loss damage. To the extent that Occupant has "self-insured", Occupant shall, beat all risk of loss damage. As Initialled below, Occupant agrees to obtain Insurance coverage for 100% of the actual cash value of Occupants property stored on or In the Promises or to be "self insured". OCCUPANT'S PERSONAL PROPERTY STORED IN OPERATOR'S LEASED SPACE OR ON OPERATORS PROJECT IS NOT INSURED BY THE OPERATOR AGAINST LOSS OR DAMAGE.

_____A. Occupant will obtain the Insurance policy described in the brochure provided by Operator.

_____B. Occupant will obtain insurance coverage from a company other than the one named In the insurance brochure provided by Operator.

_____C. Occupant elects to "self-insure" (personally assume all risk of loss or damage).

Occupant hereby releases Operator and Operators Agents and authorized representatives and employee (hereinafter collectively referred to as "Operators Agents") from any and all claims for damage or loss to the to the personal property in, on or about the Premises, that are caused by or result from perils that are, or would be, covered under required insurance policy and hereby waives any and all rights or recovery against Operator and Operators Agents in

connection with any damage which is or would be covered by any such Insurance policy. While InformatIon may be made available to Occupant with respect to insurance. Occupant *understantS and agrees* that Operator and operator's Agents are not insurers, and do not assist and have not assisted Occupant in the explanation of coverage or in the making of claims under any Insurance policy. Nothing in this paragraph shall limit or reduce the rights and benefits of Operator under paragraph 7. By placing his INITIALS HERE_____Occupant acknowledges that he has read and understands the provisions of this paragraph 6.

7. **LIMITATION OF OPERATOR'S LIABILITY; INDEMNITY**. Operator and Operators Agent shall not be liable to Occupant for any damage or lose to any person. Occupant or any property stored in, on or about the Premises or the Project, arising from any cause whatsoever, including, but not limited to, theft, fire, mysterious disappearance, rodents, acts of God or the active or passive acts, omissions or negligence of Operator or Operators Agents: except that Operator and Operator's Agents, as the case may be, may,except as otherwise provided in paragraph 6, be liable to Occupant for damage of loss to Occupant or Oocupanties Property resulting from Operator's fraud, willful injury or willful violation of law. Occupant shall indemnify and hold Operator and Operator's Agents harmless from any and all damage, loss, or expense arising out of or in connection with any damage to any person or property occurring In, on or about the Premises arising in any way out of Occupants use of the Premises, whether occasioned by Operator or Operators Agents' active or passive acts, omissions or negligence or otherwise, other than damage, loss, orexpense In connection with Operator or Operator's Agent's fraud, willful injury or willful violation of law. Notwithstanding anything contained in this

Rental Agreement, In no event shall Operator or Operator's Agents be liable to Occupant In an amount In excess of $5,000 for any damage or lose to any person, Occupant or any properly stored in, on or about the Premises or the Project arising from any cause whatsoever, Including, but not limited to, Operators Agents' active of passive acts, omissions or negligence ....

EXHIBIT 3

Iron Gate Storage - Cascade Park
802 NE 112th Ave
Vancouver, WA 98684
360-892-8800

Notice of Lien

Tenant	Larry Riley	**Date of Notice**	Jul 01, 2010
Company		**Unit Number**	028
Address	13211 NE 76th St	**Certified Mail #**	_____
City, State, Zip	Vancouver WA 98682		

Notice of Lien

Dear Tenant:

You are in default of your rental agreement for the unit(s) described below. Demand is hereby made that you pay the amount due immediately. Failure to pay will result in the sale of the contents of the unit(s). Access to the unit(s) has been suspended until payment is made in full.

Personal Effects are excluded from sale and may be picked up upon payment of any outstanding fees after the sale. If you do not believe the contents of the unit should be sold, complete and return a Declaration in Opposition to Lien form. If the proceeds of the sale exceed the charge on the account, the excess proceeds must be claimed within 90 days or will be forfeited.

The property subject to the lien is:
Household Goods

	Charge Date	Description	Amount		
05/01/2010	Rent	220.00	0.00	0.00	220.00
05/11/2010	Late Fee	10.00	0.00	0.00	10.00
05/21/2010	Pre Lien Fee	20.00	0.00	0.00	20.00
06/01/2010	Rent	220.00	0.00	0.00	220.00
06/11/2010	Late Fee	10.00	0.00	0.00	10.00
06/21/2010	Pre Lien Fee	20.00	0.00	0.00	20.00
06/24/2010	Lock Cut Fee	10.00	0.00	0.00	10.00
07/01/2010	Rent	220.00	0.00	0.00	220.00
07/01/2010	Lien Fee	25.00	0.00	0.00	25.00
		Total Due	755.00		

Sincerely,

Chuck Johnston & Katy Wagnon
Resident Managers

Paid 07/09/10 Fri (Tonya Kim auction)

0-00000014

EXHIBIT 4

Iron Gate Storage - Cascade Park
802 NE 112th Ave
Vancouver, WA 98684
360-892-8800

Notice of Auction

Larry Riley

13211 NE 76th St
Vancouver WA 98682

Date of Notice: Jul 08, 2010
Unit Number: 028
Certified Mail # 7008 3230 0000 2835 7708

Dear Tenant:

Iron Gate Storage - Cascade Park, 802 NE 112th Ave, Vancouver, WA 98684, pursuant to Washington Statute RCW 191.150 and your rental agreement number 2035 with Iron Gate Storage - Cascade Park, dated Dec 01, 2003, , for the above referenced storage unit number, hereby gives you notice that it is asserting a possessory lien on the property stored in the aforementioned unit. The lien is asserted for unpaid rental charges, late fees, and other associated charges incurred for the rent of the storage space. The amount of the lien is **$805.00**.

Personal effects are excluded from sale and may be picked up upon payment of any outstanding fees after the sale. Unless payment is made by 7/14/10 (month/day/year), the property will be sold at public auction on 7/15/10 (month/day/year) at 10:00 (A.M./P.M.) on the premises of the Iron Gate Self Storage to satisfy the lien.

This is Jul 08, 2010

Sincerely,

Chuck Johnston & Katy Wagnon
Resident Managers

Rec'd 07/16/10 Fax (Copy from last unit)

0-00000015

EXHIBIT 5

Sellers
LAW OFFICE

James L. Sellers
Attorney at Law
Washington Bar
& Oregon Bar
Post Office Box 61535
415 East Mill Plain Blvd
Vancouver, WA 98666
(360) 695-0464
Fax: 695-0466

July 17, 2010

Irongate Storage
12406 SE 5th Street
Vancouver, WA 98683

RE: Storage Agreement 2035
Space # 028
Space Tenant: Larry Riley

Dear Irongate:

I represent Larry Riley. He has had a storage unit (028) with you. He has had it for a considerable period of time. He was in arrears. He had been in arrears in the past and informally allowed to pay late. However, this time you have apparently elected to sell his property that was stored in the unit to satisfy a lien claim for his unpaid rent. At least that is what you have said and written. What you actually did may be determined later. However, this letter concerns what you didn't do and insists that you correct it.

The sale of personal property in a storage unit to satisfy a lien for unpaid rent is governed by Ch. 11.150 RCW. In order to sell property to satisfy a lien, you must strictly follow the requirements of that statute. Although I have not had sufficient time to compare all of the paperwork that you sent out to foreclose your lien claim, I have seen enough to see that you did not comply with the statute.

You failed to send a notice that met the requirements for a sale.

RCW 19.150.080(3) provides in pertinent part that after the sending of a preliminary lien notice, a final lien notice shall be sent **prior to sale** as follows:

> "The owner shall then serve by personal service or send to the occupant, . . . by certified mail, postage prepaid, a notice of final lien sale or final notice of disposition which shall state all of the following: . . .
>
> "(3) That all the property, other than personal papers and personal photographs, may be sold to satisfy the lien after a specified date **which is not less than fourteen days from the date of mailing the final lien sale notice**." [bolding and underlining added for emphasis]

I am looking at the final lien notice that you sent, which you title as "Notice of Auction". It is dated July 8, 2010. It gives notice of an auction to occur on July 15, 2010, which is the date that

A Professional Corporation

you told Mr. Riley on Friday that his property was sold. July 15, 2010 is not 14 days from the date of the notice.

Not only did you fail to comply with the express language of the statute, you sent the notice to the wrong address. Several months ago, Mr. Riley came in and advised the then managers at this location of his change of address. However, you sent the notice to his old address. By the time that the postal authorities could deliver the notice to Mr. Riley, the so-called auction had already occurred on the previous day.

Mr. Riley's storage unit contained literally thousands of dollars in personal property. There was a pool table worth at least $7,500, valuable works or art, and many items of Mr. Riley's that are irreplaceable, including his personal papers and photographs. Under the statute (RCW 19.150.080(4), you are required to maintain his papers and photographs for a period of at least six months. However, you told him yesterday that you have gotten rid of everything.

Violations of this chapter are also violations of Washington's Consumer Act. In addition to collecting his actual damages from you, Mr. Rile is entitled to collect his damages trebled, plus attorneys fees and costs. Further, your actions create liability under the tort of outrage and intentional infliction of mental distress.

Demand is hereby made that you arrange for the return of Mr. Riley's property to him immediately. When he was last in your offices on Friday, he was prepared to pay the back rent. However, you had told him the property had already been auctioned and removed. (Since you are obligated to retain his papers and photographs for six months, I don't know how it could all be gone.) Hopefully that is either not the case or you can get it all back. The damages that Mr. Riley can expect to collect from you will be thousands or dollars more than what you likely netted from the auction. Although he is not obligated to do so, Mr. Riley is willing to let you off the hook if all of his property is returned to him early next week.

Feel free to call me. I would prefer that you immediately contact an attorney on your behalf and have the attorney contact me. What you have done is ill-advised and you would be well advised to consult with your own attorney immediately.

Very truly yours,

James L. Sellers
jsellers@sellerslawoffice.com
Cell: 360.921.0762
cc: Larry Riley

EXHIBIT 6

Buyers Agreement

Buyer Agrees to the following:

This is to inform the auction buyer prior to the sale that; Iron Gate Storage and/or auctioneer in their discretion, reserves the right to cancel any Auction.

Iron Gate Storage and/or the auctioneer may ask any person(s) to leave the property at any time for any reason.

When the buyer has been awarded the unit he/she must pay by cash before leaving the property. If not, the unit will be turned back over to Iron Gate Storage.

It is the buyer's responsibility to return all personal papers, photos, legal documents, tax returns, bank statements, year books etc. to Iron Gate Storage within 10 days of the auction. If Iron Gate Storage becomes aware of any personal items not returned by buyer within the 10 day time period, Iron Gate Storage reserves the right to prohibit buyers future attendance at their auctions.

The buyer acknowledges that he or she is bidding on all items within the unit and all items must be removed and unit left clean. If the auction unit is not cleaned and or the items removed within 24 hours the buyer agrees to pay all cost involved in cleaning the unit(s) and will not be able to return to Iron Gate Storage Auctions. (If the items are not removed within 24 hours, Iron Gate Storage reserves the right to claim said property).

The buyer also acknowledges that Iron Gate Storage and/or the auctioneer may contact the buyer, and request that the items be purchased back by Iron Gate Storage and/or the auctioneer in order to prevent any court action. Notice to buyer shall be made no longer than 60 days after said auction. Iron Gate Properties and /or the auctioneer at it's sole discretion will set a reasonable price for the purchase back of the auctioned units items. Buyer is aware if items are not returned to Iron Gate Storage as requested, buyer will agree to pay all damages assigned by court action and also agrees to pay Iron Gate Storage's legal costs.

This agreement pertains to any and all future Iron Gate Auctions which buyer attends.

Agreed and Accepted:

Sonie Dolan — Name

Signature

624-1888 — Phone #

6918 NE 90th Ave — Address (Include State)

Driver ER 19011Z — Driver License #

0-000000156

EXHIBIT 7

Iron Gate Self Storage
802 NE 112th Ave
Vancouver, WA 98684
360-892-8800

Notice of Auction

Larry Riley

13211 NE 76th St
Vancouver WA 98682

Date of Notice: December 3, 2009
Unit Number: 028
Certified Mail # 7008 3230 0000 2825 7951

Dear Tenant:

Iron Gate Self Storage, 802 NE 112th Ave, Vancouver, WA 98684, pursuant to Washington Statute RCW 191.150 and your rental agreement number 2035 with Iron Gate Self Storage, dated December 1, 2003, for the above referenced storage unit number, hereby gives you notice that it is asserting a possessory lien on the property stored in the aforementioned unit. The lien is asserted for unpaid rental charges, late fees, and other associated charges incurred for the rent of the storage space. The amount of the lien is **$785.00**.

Personal effects are excluded from sale and may be picked up upon payment of any outstanding fees after the sale. Unless payment is made by 12-13-09 (month/day/year), the property will be sold at public auction on 12-14-09 (month/day/year) at 10:00 (A.M./P.M.) on the premises of the Iron Gate Self Storage to satisfy the lien.

This is December 3, 2009

Sincerely,

John Myers & Annette Felton
Resident Managers

0-00000016

EXHIBIT 7, P

EXHIBIT 8

RCW 19.150.040: When any part of the rent or other charges due from an occupant remains unpaid for fourteen consecutive days, an owner may terminate the right of the occupant to the use of the storage space at a self-service storage facility by sending a preliminary lien notice to the occupant's last known address, and to the alternative address specified in RCW 19.150.120(2), by first-class mail, postage prepaid, containing all of the following:

(1) An itemized statement of the owner's claim showing the sums due at the time of the notice and the date when the sums become due.

(2) A statement that the occupant's right to use the storage space will terminate on a specified date (not less than fourteen days after the mailing of the notice) unless all sums due and to become due by that date are paid by the occupant prior to the specified date.

(3) A notice that the occupant may be denied or continue to be denied, as the case may be, access to the storage space after the termination date if the sums are not paid, and that an owner's lien, as provided for in RCW 19.150.020 may be imposed thereafter.

(4) The name, street address, and telephone number of the owner, or his or her designated agent, whom the occupant may contact to respond to the notice. [2007 c 113 § 2; 1988 c 240 § 5.

[2007 c 113 § 2; 1988 c 240 § 5.]

RCW 19.150.050 A notice in substantially the following form shall satisfy the requirements of RCW 19.150.040:

"PRELIMINARY LIEN NOTICE

____ to (occupant)

(address)

(state)

You owe and have not paid rent and/or other charges for the use of storage (space number) at (name and address of self-service storage facility)

Charges that have been due for more than fourteen days and accruing on or before (date) are itemized as follows:

DUE DATE	DESCRIPTION	AMOUNT
		TOTAL $

IF this sum is not paid in full before (date at least fourteen days from mailing), your right to use the storage space will terminate, you may be denied, or continue to be denied, access and an owner's lien on any stored property will be imposed. You may pay the sum due and contact the owner at:

(Name)

(Address)

(State)

(Telephone)

(Date)

(Owner's Signature) "

[1988 c 240 § 6.]

RCW 19.150.060: If a notice has been sent, as required by RCW 19.150.040, and the total sum due has not been paid as of the date specified in the preliminary lien notice, the lien proposed by this notice attaches as of that date and the owner may deny an occupant access to the space, enter the space, inventory the goods therein, and remove any property found therein to a place of safe keeping. The owner shall then serve by personal service or send to the occupant, addressed to the occupant's last known address and to the alternative address specified in RCW 19.150.120(2) by certified mail, postage prepaid, a notice of final lien sale or final notice of disposition which shall state all of the following:

(1) That the occupant's right to use the storage space has terminated and that the occupant no longer has access to the stored property.

(2) That the stored property is subject to a lien, and the amount of the lien accrued and to accrue prior to the date required to be specified in subsection (3) of this section.

(3) That all the property, other than personal papers and personal photographs, may be sold to satisfy the lien after a specified date which is not less than fourteen days from the date of mailing the final lien sale notice, or a minimum of forty-two days after the date when any part of the rent or other charges due from the occupants remain unpaid, whichever is later, unless the amount of the lien is paid. The owner is not required to sell the personal property within a maximum number of days of when the rent or other charges first became due. If the total value of property in the storage space is less than three hundred dollars, the owner may, instead of sale, dispose of the property in any reasonable manner, subject to the restrictions of RCW 19.150.080(4). After the sale or other disposition pursuant to this section has been completed, the owner shall provide an accounting of the disposition of the proceeds of the sale or other disposition to the occupant at the occupant's last known address and at the alternative address.

(4) That any excess proceeds of the sale or other disposition under RCW 19.150.080(2) over the lien amount and reasonable costs of sale will be retained by the owner and may be reclaimed by the occupant, or claimed by another person, at any time for a period of six months from the sale and that thereafter the proceeds will be turned over to the state as abandoned property as provided in RCW 63.29.165.

(5) That any personal papers and personal photographs will be retained by the owner and may be reclaimed by the occupant at any time for a period of six months from the sale or other disposition of property and that thereafter the owner may dispose of the personal papers and photographs in a reasonable manner, subject to the restrictions of RCW 19.150.080(3).

(6) That the occupant has no right to repurchase any property sold at the lien sale. [2007 c 113 § 3; 1996 c 220 § 1; 1993 c 498 § 5; 1988 c 240 § 7.
[2007 c 113 § 3; 1996 c 220 § 1; 1993 c 498 § 5; 1988 c 240 § 7.]

EXHIBIT 9

EXHIBIT 9, PAGE 5

July 2010

WEEK VIEW

MONTH VIEW

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY 1	FRIDAY 2	SATURDAY 3
				NOTICE OF LIEN (Dated this date) *Notice of Lien does not Conform to Statute therefore has no legal affect.	NOTICE OF LIEN DAY 1	NOTICE OF LIEN DAY 2
4 NOTICE OF LIEN DAY 3	5 NOTICE OF LIEN DAY 4	6 NOTICE OF LIEN DAY 5	7 NOTICE OF LIEN DAY 6	8 NOTICE OF LIEN DAY 7 NOTICE OF AUCTION (Dated this date)	9 NOTICE OF LIEN DAY 8 NOTICE OF AUCTION DAY 1	10 NOTICE OF LIEN DAY 9 NOTICE OF AUCTION DAY 2
11 NOTICE OF LIEN DAY 10 NOTICE OF AUCTION DAY 3	12 NOTICE OF LIEN DAY 11 NOTICE OF AUCTION DAY 4	13 NOTICE OF LIEN DAY 12 NOTICE OF AUCTION DAY 5	14 NOTICE OF LIEN DAY 13 NOTICE OF AUCTION DAY 6	15 NOTICE OF LIEN DAY 14 NOTICE OF AUCTION DAY 7 * Legal Lien would have attached at midnight. ILLEGAL AUCTION DATE (Buyers Agreement in effect)	16 NOTICE OF AUCTION DAY 8 *First Day Legal Notice of Auction could have been sent. *Plainiff attempted to tender payment in full - payment refused. *Plaintiff requested the return of "Personal Effects" & "Non-Household Goods" in person & by phone. Buyers Agreement Day 1	17 NOTICE OF AUCTION DAY 9 NOTICE OF LEGAL AUCTION DAY 1 *Plainiff's Lawyer's Letter Delivered. Buyers Agreement Day 2
18 NOTICE OF AUCTION DAY 10 NOTICE OF LEGAL AUCTION DAY 2 Buyers Agreement Day 3	19 NOTICE OF AUCTION DAY 11 NOTICE OF LEGAL AUCTION DAY 3 Buyers Agreement Day 4	20 NOTICE OF AUCTION DAY 12 NOTICE OF LEGAL AUCTION DAY 4 Buyers Agreement Day 5	21 NOTICE OF AUCTION DAY 13 NOTICE OF LEGAL AUCTION DAY 5 Buyers Agreement Day 6	22 NOTICE OF AUCTION DAY 14 NOTICE OF LEGAL AUCTION DAY 6 Buyers Agreement Day 7	23 NOTICE OF LEGAL AUCTION DAY 7 Buyers Agreement Day 8	24 NOTICE OF LEGAL AUCTION DAY 8 Buyers Agreement Day 9
25 NOTICE OF LEGAL AUCTION DAY 9 Buyers Agreement Day 10	26 NOTICE OF LEGAL AUCTION DAY 10 Buyers Agreement Day 11	27 NOTICE OF LEGAL AUCTION DAY 11 Buyers Agreement Day 12	28 NOTICE OF LEGAL AUCTION DAY 12 Buyers Agreement Day 13	29 NOTICE OF LEGAL AUCTION DAY 13 Buyers Agreement Day 14	30 NOTICE OF LEGAL AUCTION DAY 14 Buyers Agreement Day 15	31 *First Day a Legal Auction could have occurred. Buyers Agreement Day 16

EXHIBIT 9, PAGE T

August 2010

WEEK VIEW

MONTH VIEW

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
1 Buyers Agreement Day 17	2 Buyers Agreement Day 18	3 Buyers Agreement Day 19	4 Buyers Agreement Day 20	5 Buyers Agreement Day 21	6 Buyers Agreement Day 22	7 Buyers Agreement Day 22
8 Buyers Agreement Day 23	9 Buyers Agreement Day 24	10 Buyers Agreement Day 25	11 Buyers Agreement Day 26	12 Buyers Agreement Day 27	13 Buyers Agreement Day 28	14 Buyers Agreement Day 29
15 Buyers Agreement Day 30	16 Buyers Agreement Day 31	17 Buyers Agreement Day 32	18 Buyers Agreement Day 33	19 Buyers Agreement Day 34	20 Buyers Agreement Day 35	21 Buyers Agreement Day 36
22 Buyers Agreement Day 37	23 Buyers Agreement Day 38	24 Buyers Agreement Day 39	25 Buyers Agreement Day 40	26 Buyers Agreement Day 41	27 Buyers Agreement Day 42	28 Buyers Agreement Day 43
29 Buyers Agreement Day 44	30 Buyers Agreement Day 45	31 Buyers Agreement Day 46				

EXHIBIT 9, PAGE U

September 2010

WEEK VIEW

MONTH VIEW

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
			1 Buyers Agreement Day 47	2 Buyers Agreement Day 48	3 Buyers Agreement Day 49	4 Buyers Agreement Day 50
5 Buyers Agreement Day 51	6 Buyers Agreement Day 52	7 Buyers Agreement Day 53	8 Buyers Agreement Day 54	9 Buyers Agreement Day 55	10 Buyers Agreement Day 56	11 Buyers Agreement Day 57
12 Buyers Agreement Day 58	13 Buyers Agreement Day 59	14 Buyers Agreement Day 60 *Final Day per Buyers Agreement to buy back Auctioned Property	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		