

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO.: 1:16-cv-25009

JERRY LEE COLEMAN,
on behalf of himself and all others
similarly situated,

CLASS ACTION

Plaintiff,

v.

CUBESMART, a Maryland
Real Estate Investment Trust,

Defendant.

CLASS ACTION COMPLAINT

Plaintiff, Jerry Lee Coleman, on behalf of himself and all others similarly situated, files this Complaint against CubeSmart, a Maryland Real Estate Investment Trust, and alleges as follows:

INTRODUCTION

1. This is a proposed class action lawsuit brought on behalf of the Plaintiff and others like him who rented storage units from CubeSmart, a national self-storage company. The proposed class challenges CubeSmart's practice of collecting a hidden commission every time a customer buys a storage insurance policy from a particular third-party insurance company. CubeSmart's practice is deceptive, unconscionable, and results in CubeSmart being unjustly enriched to the detriment of its customers.

2. CubeSmart's scheme can be summarized as follows:

{00111024.3 }

3. CubeSmart requires its customers to maintain insurance for the things they store in their CubeSmart storage unit. The company's form contract specifically requires customers to agree to insure the full replacement value of their unit's contents.

4. Although CubeSmart requires its customers to maintain storage insurance, it does not itself issue insurance policies to its customers. Instead, CubeSmart markets something called the "Great American Stored Property Insurance Program" to its customers. This "program" is a storage insurance policy underwritten by a third-party insurance company.

5. CubeSmart characterizes itself as a mere collection agent for this insurance company. In its form contract, CubeSmart states that "[a]ny insurance premium . . . is being collected for a third party insurance provider pursuant to a separate agreement."

6. This characterization is reinforced by the insurance participation form that customers who purchase the Great American policy must complete. In that form, the customer is required to acknowledge that a "portion" of the insurance premium is covering CubeSmart's "expense" in serving as a collection agent for the third-party insurance company. Specifically, the form reads as follows: "I understand a portion of the cost I pay is applicable to the storage company's expense in collecting, accounting, and remitting payment to the Insurance Company" (emphasis added).

7. The definition of "expense" is "the amount of money that is needed to pay for or buy something." Merriam-Webster Online Dictionary, <http://www.merriam-webster.com/dictionary/expense> (last visited November 11, 2016).

8. In truth, however, CubeSmart's cut of the premium far exceeds the amount necessary to cover its "expense" in serving as a collection agent. Indeed, CubeSmart generates substantial revenues and profits from its customers' purchases of Great American policies. In its

own public filings, CubeSmart identifies this income as “customer insurance commissions.” These commissions serve as a hidden profit center for CubeSmart.

9. The definition of “commission” is “an amount of money paid to an employee for selling something.” Merriam-Webster Online Dictionary, <http://www.merriam-webster.com/dictionary/commission> (last visited November 11, 2016).

10. CubeSmart has deceived and continues to deceive its customers by mischaracterizing a “commission” as an “expense,” thereby concealing its financial interest in the customers’ purchase of an insurance policy whose price includes an undisclosed commission.

PARTIES, JURISDICTION, AND VENUE

11. Plaintiff, JERRY LEE COLEMAN, is a resident of Seminole County, Florida.

12. CubeSmart is a Maryland Real Estate Investment Trust with its principal place of business in Pennsylvania.

13. This Court has original jurisdiction under the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d)(2). Plaintiff is a citizen of the State of Florida and CubeSmart is a citizen of a different state. The amount in controversy in this action exceeds \$5,000,000.00, exclusive of interests and costs, there are more than 100 members of each of the putative classes, and this action is brought by a citizen of a state that is different from the state where CubeSmart is incorporated and has its principal place of business.

14. This Court has personal jurisdiction over CubeSmart because it continuously and systematically operates, conducts, engages in, and carries on business in Florida by renting over 5 million square feet of self-storage space from 74 Florida locations, including locations in Miami, Florida. CubeSmart purposefully avails itself of Florida’s consumer market through the advertisement, promotion, and rental of its self-storage space in Florida and engages in solicitation

and service activities within this state. In addition, CubeSmart committed in Florida the unlawful and tortious acts set forth below, which injured and caused damage to the Plaintiff in Florida.

15. Venue is proper in this Court, pursuant to 28 U.S.C. § 1391(b) and § 1391(c) because Defendant resides in this district for purposes of the statute, as CubeSmart is subject to the personal jurisdiction of this Court for purposes of this action.

FACTUAL ALLEGATIONS

16. CubeSmart's core business is the rental of storage space to customers. CubeSmart is not an insurer and is not registered as such in the State of Florida. CubeSmart is not engaged in the sale of insurance.

17. CubeSmart owns facilities in 22 states and in the District of Colombia. The company operates approximately 74 locations in Florida.

18. If a customer wants to rent storage space at a CubeSmart location, he or she must execute a rental agreement.

19. CubeSmart's rental agreements are standardized and the company uses the same standard rental agreement nationwide. A copy of CubeSmart's standard rental agreement is attached to this Complaint as **Exhibit 1**.

20. CubeSmart's rental agreement requires customers to maintain insurance on the contents of their storage unit. This insurance must be sufficient to cover the full replacement value of the property the customer is storing in the unit. Specifically, the rental agreement states that the customer "WILL MAINTAIN INSURANCE FOR THE FULL REPLACEMENT VALUE OF THE CUBE CONTENTS."

21. CubeSmart is not an insurance company and does not insure the property of its customers. In the rental agreement, CubeSmart expressly represents that it does not insure the contents of storage units, stating that “OWNER DOES NOT INSURE THE CUBE CONTENTS.”

22. CubeSmart makes available the “Great American Stored Property Insurance Program” to its customers.

23. This “program” is an insurance policy underwritten by the Great American Assurance Company. The policy administrator is City Securities Insurance, LLC. On information and belief, the Great American policy is the only policy that CubeSmart makes available to its customers.

24. The Great American policy was offered at three coverage levels: (1) \$2,000 of coverage for \$12 a month; (2) \$3,000 of coverage for \$17 a month; and (3) \$5,000 of coverage for \$27 a month.

25. Every time a customer elects to buy a Great American insurance policy, CubeSmart receives a share of the monthly insurance premium paid by the customer. In the insurance participation form completed by customers who purchase the Great American policy, CubeSmart represents that a “portion” of the insurance premium is covering CubeSmart’s “expense” in serving as a collection agent for the third-party insurance company. A copy of this insurance participation form is attached to this Complaint as **Exhibit 2**.

26. However, in its own securities filings, CubeSmart has characterized the income from this “portion” of the insurance premium as “customer insurance commissions.”

27. CubeSmart’s share of these insurance premiums generates substantial revenues and profits for the company. In CubeSmart’s Form 10-K for the 2015 fiscal year, the company reported taking in \$45.2 million in non-rental revenue, including “customer insurance commissions.” This

was a \$5.1 million increase from the 2014 fiscal year, during which CubeSmart reported taking in \$40.1 million in non-rental revenue. CubeSmart attributed part of this \$5.1 million increase in revenue to “increased insurance penetration.”

28. CubeSmart’s reliance on the Great American insurance policy as a profit driver was expressly envisioned by the policy’s administrator, City Securities Insurance, LLC. In a press release announcing the launch of the Great American Stored Property Insurance Program, City Securities noted that, “[f]or storage operators” the program “means a revenue boost to the bottom line.”

29. Despite the fact that CubeSmart profits from the sale of Great American policies to its customers, the company expressly deceives its customers about its financial interest. CubeSmart portrays itself to its customers as a mere collection agent with no financial stake in the sale of insurance. In Section f of the rental agreement, which is titled “Insurance,” CubeSmart represents that “[a]ny insurance premium . . . is being collected for a third party insurance provider pursuant to a separate agreement.”

30. This characterization of CubeSmart as serving as a disinterested collection agent is reinforced by Great American’s insurance participation form, which states that a “portion” of the insurance premium is covering CubeSmart’s “expense” for serving as a collection agent and that “I understand a portion of the cost I pay is applicable to the storage company’s expense in collecting, accounting, and remitting payment to the Insurance Company.” *See Exhibit 2.*

31. In truth, CubeSmart recoups more than just the “expense” it incurs in serving as a collection agent for Great American. It profits from the sale of Great American policies, but conceals that fact from its customers.

32. On September 10, 2016, the Plaintiff rented self-storage space at CubeSmart store 0857, located in Sanford, Florida.

33. Consistent with the requirement found in his CubeSmart rental agreement that he maintain insurance for his stored belongings, the Plaintiff purchased \$2,000 of coverage for \$12 a month.

34. Each month since renting his self-storage space and purchasing self-storage insurance, the Plaintiff has been charged \$12 on his monthly statement from CubeSmart.

35. CubeSmart has never disclosed to the Plaintiff, or any of the class members, the true nature of its relationship with Great American Assurance Company or City Securities Insurance, LLC. Specifically, CubeSmart has not disclosed the fact that it profits from the sale of these policies.

CLASS ACTION ALLEGATIONS

36. Plaintiff brings this Complaint as a class action pursuant to Federal Rule of Civil Procedure 23.

Class Definition

37. Plaintiff seeks to represent the following Class:

Class

All persons who rented storage units from CubeSmart within the United States and who purchased Great American self-storage insurance policies offered at CubeSmart within the applicable limitations period (the "Class Period").

Excluded from this class are CubeSmart, its affiliates, subsidiaries, agents, board members, directors, officers, and/or employees.

38. Plaintiff seeks to represent the following Florida Class:

Florida Class

All persons who rented storage units from CubeSmart within Florida and who purchased Great American self-storage insurance policies offered at CubeSmart within the applicable limitations period (the “Florida Class Period”).

Excluded from this class are CubeSmart, its affiliates, subsidiaries, agents, board members, directors, officers, and/or employees.

39. The number of members in the Class and Florida Class is in the thousands and joinder of all Class members and Florida Class members in a single action is impracticable.

40. This class action is brought pursuant to Rule 23(b)(2) because CubeSmart has acted or refused to act on grounds generally applicable to all of the members of the Class and the Florida Class, thereby making final injunctive relief or declaratory relief concerning the Class and the Florida Class appropriate.

41. This class action is also brought pursuant to Rule 23(b)(3) because the questions of law or fact common to Plaintiff’s claims and the Class members’ and the Florida Class members’ claims predominate over any question of law or fact affecting only individual Class members and Florida Class members.

42. CubeSmart has subjected Plaintiff and the members of the Class and the Florida Class to the same unlawful, unfair, and deceptive practices and harmed them in the same manner. The conduct described above is CubeSmart’s standard business practice.

A. Numerosity

43. The individual Class and Florida Class members are so numerous that joinder of all members is impracticable. CubeSmart operates approximately 445 facilities nationwide, including 74 facilities in Florida.

44. Nationwide, in 2015 alone, CubeSmart collected \$45.2 million in non-rental income, including customer insurance commissions. Upon information and belief, these

commissions were collected from thousands of customers. The exact number of Class members in Florida, as well as nationwide, including the Class members and the Florida Class members' names and addresses, can be identified from CubeSmart's business records.

B. Commonality/Predominance

45. Common questions of law and fact exist as to Plaintiff's, the Class members', and the Florida Class members' claims. These common questions predominate over any questions solely affecting individual Class and Florida Class members, including but not limited to, the following:

a. Whether CubeSmart engaged in a deceptive and unfair business practice by misleading the Class and the Florida Class about its financial interest in the Great American self-storage insurance product and the nature of the payments it receives from the insurance premium;

b. Whether the representations made and insurance premiums collected by CubeSmart would lead a reasonable consumer to believe CubeSmart only recouped its expenses in collecting and remitting insurance premiums;

c. Whether CubeSmart receives undisclosed commissions, kickbacks, or fees from the self-storage insurance;

d. Whether CubeSmart manipulated the Class and the Florida Class in order to maximize its own profits at the expense of the Class and the Florida Class;

e. Whether and to what extent the Defendant's conduct injured the Plaintiff and the Class and the Florida Class members;

f. Whether CubeSmart breached its contract with the Class and the Florida Class members, and violated the implied covenant of good faith and fair dealing, by retaining a portion

of the premiums while representing in the rental agreement that it would not insure the Class and the Florida Class;

g. Whether CubeSmart unlawfully enriched itself at the expense of the Class and the Florida Class;

h. Whether CubeSmart violated Florida's Deceptive and Unfair Trade Practices Act; and;

i. Whether CubeSmart's conduct is unconscionable.

C. Typicality

46. Plaintiff's claims are typical of the Class members' and the Florida Class members' claims because of the uniformity and common purpose of CubeSmart's unlawful conduct. Plaintiff, like all Class members and Florida Class members, was damaged through his payment of "commissions" that were mischaracterized as "expenses."

47. Each Class member and Florida Class member has sustained, and will continue to sustain, damages in the same manner as Plaintiff as a result of CubeSmart's unlawful conduct.

D. Adequacy

48. Plaintiff will fairly and adequately protect and represent the interest of each member of the Class because he has suffered the same wrongs as the Class members. Similarly, the Plaintiff will fairly and adequately protect and represent the interest of each member of the Florida Class because he has suffered the same wrongs as the Florida Class members.

49. Plaintiff is fully cognizant of his responsibilities as a Class representative and has retained Leon Cosgrove, LLC and Buckner + Miles to prosecute this case. The firms are experienced in complex class action litigation, including litigation related to unfair and deceptive

trade practices, and have the financial and legal resources to meet the costs of, and understand the legal issues associated with, this type of litigation.

50. Class action treatment is superior to the alternatives, if any, for the fair and efficient adjudication of the controversy alleged herein, because such treatment will permit a large number of similarly-situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of evidence, effort, and expense that numerous individual actions would engender.

E. Requirements of Federal Rule of Civil Procedure 23(b)(2)

51. The prerequisites to maintaining a class action for equitable relief pursuant to Federal Rule of Civil Procedure 23(b)(2) exist as CubeSmart has acted or refused to act on grounds generally applicable to the Class and the Florida Class, thereby making appropriate final equitable relief with respect to the Class and the Florida Class as a whole.

52. CubeSmart's actions are generally applicable to the Class and the Florida Class as a whole, and Plaintiff seeks, among other things, equitable remedies with respect to the Class and the Florida Class as a whole. As a result, when determining whether common questions predominate, courts focus on the liability issue, and if the liability issue is common to the class as is the case at bar, common questions will be held to predominate over individual questions.

F. The Prerequisites of Rule 23(b)(3) are Satisfied

53. The questions of law and fact enumerated above predominate over questions affecting only individual members of the Class and the Florida Class, and a class action is the superior method for fair and efficient adjudication of the controversy.

54. The likelihood that individual members of the Class and the Florida Class will prosecute separate actions, and their interest in so doing, is small due to the extensive time and considerable expense necessary to conduct such litigation.

55. This action will be prosecuted in a fashion to ensure the Court's able management of this case as a class action on behalf of the Class and the Florida Class. Plaintiff knows of no difficulty likely to be encountered in the management of this action that would preclude its maintenance as a class action.

COUNT I
VIOLATION OF FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT
(On behalf of the Florida Class)

56. Plaintiff re-alleges paragraphs 1 through 55 as if fully set forth herein.

57. This Count is brought pursuant to the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA").

58. At all times material, Plaintiff and all members of the Florida Class were consumers within the meaning of Section 501.203, Fla. Stat., and are entitled to relief under FDUTPA, in accordance with Section 501.211, Fla. Stat.

59. At all times material, CubeSmart conducted trade and commerce within the meaning of Section 501.203, Fla. Stat.

60. CubeSmart has engaged in unlawful schemes and courses of conduct through one or more unfair and deceptive acts and practices alleged above.

61. Specifically, CubeSmart misled and deceived its customers by claiming that it only collected a portion of the premium sufficient to cover its expenses when, in fact, it collected "commissions" that served as a significant profit center for CubeSmart.

62. The unfair and deceptive acts and practices alleged above occurred in connection with CubeSmart's trade and commerce in Florida.

63. As a direct and proximate result of CubeSmart's FDUTPA violations, Plaintiff and the Florida Class have been damaged in an amount to be proven at trial.

64. Plaintiff and the Florida Class are entitled to actual damages, declaratory and injunctive relief, attorneys' fees and costs, and all other remedies available under FDUTPA.

COUNT II
BREACH OF CONTRACT
(On behalf of the Class)

65. Plaintiff re-alleges paragraphs 1 through 55 as if fully set forth herein and further alleges the following:

66. Defendant CubeSmart utilizes a standard form rental agreement with its customers.

67. This contractual agreement requires customers to purchase insurance for their stored goods, requiring them to agree that they "WILL MAINTAIN INSURANCE FOR THE FULL REPLACEMENT VALUE OF THE CUBE CONTENTS."

68. The contract further states that CubeSmart will not insure the customer's goods: "OWNER DOES NOT INSURE THE CUBE CONTENTS." With regard to the insurance provided by Great American Assurance Company and City Securities Insurance, LLC, the contract states that "Any insurance premium shown [in the rental agreement] is being collected for a third party insurance provider pursuant to a separate agreement."

69. This contract is legally valid and enforceable, and Plaintiff complied with all material terms and conditions precedent by purchasing self-storage insurance through Great American Assurance Company and City Securities Insurance, LLC and paying his monthly premiums.

70. In the insurance participation form completed by its customers who purchase the Great American policy and made part of CubeSmart's contract with its customers, CubeSmart represents that it will collect only a "portion" of the insurance premium sufficient to cover CubeSmart's "expense" in serving as a collection agent for the third-party insurance company. However, CubeSmart collects more than that "portion" and in so doing breaches its contract with Class members.

71. Plaintiff and the Class suffered damages as a result of CubeSmart's breaches.

COUNT III
UNCONSCIONABILITY
(On behalf of the Class)

72. Plaintiff re-alleges paragraphs 1 through 55 as if fully set forth herein and further alleges the following:

73. CubeSmart's policies and practices with regard to selling self-storage insurance are or were substantively and procedurally unconscionable in the following respects, among others:

- a. CubeSmart is a company worth hundreds of millions of dollars that has an extreme advantage over its customers in terms of bargaining power;
- b. CubeSmart failed to disclose that it was keeping more of the premium than was necessary to cover its expenses in collecting, accounting and remitting payment to the insurance company actually providing the storage insurance;
- c. The premium charged on the insurance policy that CubeSmart markets to its customers is outrageously unfair to consumers.

74. Considering the great business acumen and experience of CubeSmart in relation to Plaintiff and the Class, its superior and unique knowledge of the arrangement between itself and the insurer whose premiums it purports to be collecting, the material omissions regarding the

insurance being sold, including the fact that CubeSmart profits from the sale of insurance to customers, the commercial unreasonableness of its arrangement with the insurer and its concealment of it, and similar policy concerns, the contract provisions that allowed CubeSmart to collect the insurance premiums from Plaintiff and the Class are unconscionable and therefore unenforceable as a matter of law.

75. Plaintiff and the Class suffered damages as a result of Defendant's unconscionable policies and practices.

COUNT IV
UNJUST ENRICHMENT
(On behalf of the Class)

76. Plaintiff re-alleges paragraphs 1 through 55 as if fully set forth herein and further alleges the following:

77. Plaintiff and each member of the class conferred a benefit on CubeSmart through their payment for storage insurance with the Great American Assurance Company and City Securities Insurance, LLC, from which CubeSmart took a "portion" that exceeded its actual expenses for collecting, accounting and remitting payment to the insurance company actually providing the storage insurance, allowing CubeSmart to enrich itself to the detriment of the Class.

78. CubeSmart voluntarily accepted and retained the benefit.

79. Under the circumstances, it would be inequitable for CubeSmart to retain the benefit, as it was obtained unlawfully through unfair and deceptive practices.

80. Plaintiff and the class suffered damages as a result of CubeSmart's misconduct.

COUNT V
BREACH OF CONTRACT AND BREACH
OF COVENANT OF GOOD FAITH AND FAIR DEALING¹
(On behalf of the Class)

81. Plaintiff re-alleges paragraphs 1 through 55 as if fully set forth herein and further alleges the following:

82. Plaintiff and the Class entered into a valid and enforceable standard form contract with CubeSmart.

83. The law implies a covenant of good faith and fair dealing in every contract.

84. CubeSmart breached the covenant of good faith and fair dealing by, among other things, falsely representing in the contract that it was only being reimbursed for expenses incurred in collection, accounting, and remitting payment to the insurance company that was actually providing the storage insurance when, in fact, CubeSmart was receiving a significant “commission” from the insurance premiums that far exceeded its actual expenses, thereby creating an undisclosed profit center for CubeSmart and damaging the Plaintiff and the Class members.

85. Plaintiff and the Class suffered damages as a result of CubeSmart’s breach.

PRAYER FOR RELIEF

Plaintiff, on behalf of himself, the Class, and the Florida Class requests the following relief:

- a. Certification of the Class and the Florida Class;
- b. Appointment of Plaintiff as Class representative and Plaintiff’s counsel as Class counsel;

¹ Florida and certain other states recognize a claim for breach of the covenant of good faith and fair dealing as a separate and independent claim from breach of contract. Other states treat such a claim as a species of breach of contract. For the sake of convenience, the Complaint pleads these two types of claims, which are substantively identical, in a single count.

- c. A jury trial and judgment against Defendant CubeSmart;
- d. A declaration and an order requiring that CubeSmart make full and accurate disclosure to consumers of the amount of commissions it receives;
- e. The cost of suit, including reasonable attorneys' fees, in accordance with FDUTPA;
- f. General, actual, and compensatory damages in an amount to be determined at trial;
- g. Restitution of all insurance commissions paid by Plaintiff and members of the Class and Florida Class, as a result of the wrongs alleged herein, in an amount to be determined at trial;
- h. Pre-judgment and post-judgment interest at the maximum rate permitted by applicable law; and
- i. Such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial as to all claims so triable.

Dated: December 1, 2016.

Respectfully submitted,

/s/ Scott b. Cosgrove, Esq.

Scott B. Cosgrove, Esq.

Fla. Bar No. 161365

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Counsel for Plaintiff and the putative class

EXHIBIT 1

FLORIDA SELF-STORAGE RENTAL AGREEMENT ("AGREEMENT")

A. BASIC INFORMATION:

CUSTOMER'S INFORMATION:

Name ("Customer"): Jerry Lee Coleman

Phone Number: (901)288-7252

Date of Birth: 02/27/1960

Alternate Phone Number: (901)834-7260

Address: 1181 Peralta Ct

E-Mail Address (Customer

Sanford FL 32771

agrees that **all** notices may be

sent to this e-mail address): jcoleman1960@aol.com

Last 4 Digits of Driver's License Number: 0 6 7 0

DL State: FL DL Expiration Date: 02/2016

Military Member: Yes No

Customer represents and warrants that no party has a lien on or security interest in the items stored in the Cube; except for the following "Lienholders" (if blank then no Lienholders; contact Owner immediately of any additional Lienholders):	1) Lienholder Name: _____
	Lienholder Address: _____
	2) Lienholder Name: _____
	Lienholder Address: _____

OWNER'S INFORMATION:

CubeSmart Management, as "Agent" for the

Phone Number: (407)302-7700

Name: Owner of the Store ("Owner")

E-Mail Address: STORE0857@CUBESMART.COM

Notice & Rent Payment Address ("Owner Address"): 3750 West State Road 46, Sanford, 32771

RENTAL INFORMATION:

Storage Cube Number ("Cube"): 6276

Cube Designation (**size is approximate**): 5 x 5 - CC

Store Address 3750 West State Road 46

Rental Term ("Term"): Month to Month starting on the Effective Date

("Store"): Sanford FL 32771

Monthly Rent Due Date: On or before the 10 day of each month

Monthly Rent Amount ("Monthly Rent"): \$ 335.10

Monthly Insurance Premium, if any: \$ 12.00

Move-In Promotion, if any: 10% Off

Monthly Invoice Fee, if any: \$ 0.00

Total Monthly Amount Due (plus any taxes): \$ 47.10

FEES:

Administrative Rental Fee:	\$24.00 at signing.
Administrative Invoice Fee:	\$1.00 per month on the Monthly Rent Due Date.
Administrative Lien Fee:	\$110.00 if Owner does not receive rent by the 30 th day after it became due.

Insufficient Funds Fee:	\$30.00 if a check, ACH, credit card, or other payment is reversed, returned, or refused.
1 st Late Fee:	\$10.00 if Owner does not receive rent by the 6 th day after it became due.
2 nd Late Fee:	\$15.00 if Owner does not receive rent by the 16 th day after it became due.

B. TERMS AND CONDITIONS

This Agreement includes Section A, Section B, and the Rules and Regulations located at <http://www.cubesmart.com/rulesandregulations/>. Customer is referred to as "I", "Me", "Myself" or "My" below. I, the Customer, promise, acknowledge, and agree as follows:

a. **Cube.** I rent the Cube for the Term in "as-is" condition. I will store only My personal property in the Cube (called "Cube Contents") with an aggregate value of no more than \$5,000. I will not use the Cube for residential purposes or any other prohibited uses. If I or My guest damages the Cube or the Store, I will immediately pay to Owner the costs to repair the damage. I am solely responsible for locking the Cube and securing the Cube Contents. In an emergency, Owner may relocate the Cube Contents to a different space and I will rent that space as the "Cube" under this Agreement. Owner may access the Cube for inspections, repairs, or maintenance. Except in an emergency, I will receive advance notice of Owner's intent to access the Cube and, if I do not provide access within 5 days, Owner may remove the lock and access the Cube without me. Owner does not assume custody of, or control over, the Cube Contents even if Owner enters the Cube or denies Me access to the Cube.

b. **Rent & Fees.** I will pay the Monthly Rent and any tax or assessment levied on the Monthly Rent in advance, without demand, setoff or reduction, on each Monthly Rent Due Date shown in Section A. I will pay the Fees shown in Section A when due. I agree that the Fees are reasonable, are not a penalty, and are agreed upon because it is difficult to calculate the administrative costs or damages that Owner will incur due to My Cube rental or default. Endorsements or instructions on or accompanying any rent payment are void. I am an authorized user of, and I authorize the Owner Parties to charge rent to, any credit card, debit card, or other payment method enrolled in Owner's "auto pay" program (called "Payment Method"). I may withdraw this authorization by notifying Owner in writing at least 10 days before any rent is due. Owner may cancel My enrollment in an "auto pay" program and refuse to accept the Payment Method at any time.

c. **Lease Changes & Termination.** Owner may change the terms of this Agreement by notifying me 30 days in advance. My use of the Cube after this 30 day period expires is My acceptance of those changes. Either I or Owner may terminate this Agreement at any time. If I terminate this Agreement before the end of a monthly Term, I will not receive a rent refund. Before this Agreement terminates, I will remove all Cube Contents from the Cube and leave the Cube in the same condition it was in on the Effective Date, subject to reasonable wear and tear. I will be in default of this Agreement if I do not vacate and surrender the Cube as described above and, in addition to Owner's other remedies, Owner may (1) consider any remaining Cube Contents abandoned and dispose of them at My cost; (2) repair any damage to the Cube at My cost; and/or (3) consider Me to be in "holdover" and immediately increase the Monthly Rent by 200%.

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d. **Default.** I will be in default of this Agreement if Owner does not receive a rent when due or if I violate any of the terms of this Agreement. If I am in default, Owner may: (1) terminate this Agreement, (2) exercise any rights or remedies under this Agreement, at law, or in equity, and/or (3) deactivate My gate code, if any, and, if My default continues for 5 days, deny me access to the Cube. I will immediately pay to Owner any attorneys' fees, court costs, or other expenses incurred by Owner in connection with My default.

e. **Owner's Statutory Lien.** UNDER THE SELF STORAGE FACILITY ACT, OWNER HAS A LIEN ON ALL CUBE CONTENTS, WHETHER OR NOT OWNED BY ME, FOR RENT, LABOR, OR OTHER CHARGES, PRESENT OR FUTURE, IN RELATION TO THE CUBE CONTENTS, AND FOR EXPENSES NECESSARY FOR THE PRESERVATION OF THE CUBE CONTENTS, OR EXPENSES REASONABLY INCURRED IN THE SALE OR OTHER DISPOSITION OF THE CUBE CONTENTS. **THE CUBE CONTENTS MAY BE SOLD TO SATISFY ALL OR PART OF OWNER'S LIEN IF I AM IN DEFAULT OF THIS AGREEMENT.** If a published advertisement of the sale is required, owner may meet this requirement by posting an advertisement on owner's website, www.cubessmart.com or www.cubessmart.com/storage-auctions/.

f. **Insurance.** I BEAR THE ENTIRE RISK OF LOSS FOR THE CUBE CONTENTS. I WILL MAINTAIN INSURANCE FOR THE FULL REPLACEMENT VALUE OF THE CUBE CONTENTS. OWNER DOES NOT INSURE THE CUBE CONTENTS. Any insurance premium shown in Schedule A is being collected for a third party insurance provider pursuant to a separate agreement.

g. **Waiver, Release, & Indemnity.** I WAIVE, AND I RELEASE THE OWNER PARTIES FROM, ANY CLAIMS THAT I MAY HAVE IF THE CUBE CONTENTS ARE LOST, STOLEN, OR DAMAGED FOR ANY REASON (INCLUDING FIRE, WATER, ELEMENTS, ACTS OF GOD, THEFT, BURGLARY, VANDALISM, MYSTERIOUS DISAPPEARANCE, MOLD, MILDEW, RODENTS, OR INSECTS). I waive any right of subrogation that My insurance company may have against the Owner Parties, and I will cause My insurance policy to reflect this waiver. I will indemnify, defend, and hold harmless the Owner Parties from any Claims arising out of (1) the acts, omissions, negligence, or breach of this Agreement by Me or My guests, and (2) the loss, damage, or release of any Cube Contents including any private or personally identifiable information. "Owner Parties" refers to Owner, Agent, CubeSmart, L.P., and their officers, directors, employees, agents, subsidiaries, parents, affiliates, successors, and assigns. "Claims" refers to any claims, costs, liabilities, or damages (including indirect, incidental, special, or consequential), arising from strict liability, Owner's negligence, or otherwise. **OWNER AND I EACH WAIVE OUR RIGHTS TO A TRIAL BY JURY IN ANY ACTION ARISING OUT OF THIS AGREEMENT. OWNER AND I WAIVE AND RELEASE EACH OTHER FROM ALL CLAIMS FOR WHICH A LAWSUIT OR ACTION HAS NOT BEEN COMMENCED WITHIN 1 YEAR AFTER THE CLAIM AROSE.**

h. **Limitation of Liability & Warranties.** THE OWNER PARTIES' MAXIMUM, AGGREGATE LIABILITY WITH RESPECT TO THE CUBE CONTENTS, IF ANY, IS \$5,000. I WAIVE ANY RIGHT TO MAKE A CLAIM AGAINST THE OWNER PARTIES WITH RESPECT TO THE CUBE CONTENTS ABOVE \$5,000 IN THE AGGREGATE. Owner does not make and disclaims, and I waive, all warranties of any kind with respect to the Store, the Cube, Owner's services or any items sold at the Store.

i. **Notices.** Any notices that I send to Owner will be in writing and sent by certified mail to the Owner Address. Unless prohibited by the self-storage lien laws, Owner may send all notices to me (including default and lien sale notices) to My e-mail address in Section A. I will immediately send notice to Owner of any changes to My address, phone number, e-mail address or any other Basic Information in Section A. I release Owner from any Claims that may arise if I do not notify Owner of Basic Information changes.

j. **Permission To Call & E-Mail.** I entered into a business relationship with Owner, and I agree that Owner and Owner's employees, agents, vendors, and contractors may contact me by phone, e-mail, or otherwise with business related communications.

k. **Customer's OFAC Representation and Warranty.** I have been, and will continue to be, in compliance with U.S. Executive Order 13224 ("Order"). I am not a Blocked Person, Specially Designated National, Terrorist, Global Terrorist, part of a Foreign Terrorist Organization, Specially Designated Narcotics Trafficker, or otherwise included in the OFAC List, Order, or 31 CFR Ch V (Part 595) Appendix A.

l. **Miscellaneous.** This is the entire Agreement. This Agreement binds and inures to the benefit of Owner and Me and our successors, heirs, administrators, legal representatives, and permitted assigns, and is governed by the laws of the state where the Store is located. If any part of this Agreement is unenforceable or invalid, the remaining parts of this Agreement will remain enforceable and valid. As used in this Agreement, "rent" refers to Monthly Rent and all fees, charges, and other amounts that I must pay under this Agreement. I will not assign this Agreement or sublease the Cube. Owner may freely assign this Agreement. If Customer is a business, the person signing for Customer represents and warrants that he/she is authorized to sign, and to bind the business to, this Agreement.

I and Owner, intending to be legally bound, sign this Agreement as of the Effective Date. **I MAY NOT STORE ITEMS IN THE CUBE WITH A TOTAL VALUE ABOVE \$5,000. OWNER'S MAXIMUM LIABILITY FOR STORED ITEMS, IF ANY, IS \$5,000.**

CUBESMART MANAGEMENT, LLC, as Owner's agent


CUSTOMER

By: _____/s/
Manager (electronic signature)

EXHIBIT 2

GREAT AMERICAN STORED PROPERTY INSURANCE PROGRAM
offered by City Securities Insurance LLC, a Licensed Agent

Personal Property Insurance Participation Form

Name: 0857 FL SANFORD - WEST STATE ROAD 46 **Phone:** (407)302-7700
Address: 3750 West State Road 46
City: Sanford **State:** FL **Zip Code:** 32771

As a condition of your lease, the Customer is required to insure their personal property for Fire and Extended Coverage perils including Burglary and Transit. The Customer may participate in the Great American Stored Property Insurance Program from City Securities Insurance LLC, a licensed agent. Neither the landlord nor the leasing agent is an insurance agent.

CUSTOMER INFORMATION

Customer's Name(s): Jerry Lee Coleman **Effective Date:** 9/10/2016
Customer's Address: 1181 Peralta Ct **Cube #:** 6276
City, State, Zip: Sanford FL 32771 **Disc/Cylinder Lock:** YES or NO
Daytime Phone #: (901)288-7252
Email Address: jcoleman1960@aol.com

COVERAGE SELECTION (Initial one box and complete the information)

I AGREE TO PARTICIPATE IN THE GREAT AMERICAN STORED PROPERTY INSURANCE PROGRAM from City Securities Insurance, LLC. The coverage from Great American is for goods you store at this leased Cube. Covered causes of loss include fire or lightning, sonic boom, explosion, windstorm or hail, smoke, aircraft or vehicles, riot or civil commotion, vandalism, sinkhole collapse, falling objects, weights of snow, ice, or sleet, water damage and earthquake. **Flood coverage is not provided.** The policy contains exclusions, limitations, definitions and conditions. Coverage is in effect only in the event you pay the monthly cost listed below and you continue to pay monthly through the duration of your lease. I understand a portion of the cost I pay is applicable to the storage company's expense in collecting, accounting and remitting payment to the Insurance Company.

Coverage: \$2,000 \$3,000 \$5000
Monthly Cost: \$ 12 \$ 17 \$ 27
Type of Goods Stored: Household Goods/Personal Property) Wheel chair, Boxes
 Business/Trade Property (describe) _____
 Vehicle, Boat/Trailer (describe) _____

All Insurance related questions and requests should be directed to: City Securities Insurance, LLC, 8900 Keystone Crossing, Ste. 300, Indianapolis, IN 46240. (317) 972-7117 (office), (317) 972-7101 (fax), storage@citysecurities.com

Signature(s): _____ **Date:** 9/10/2016

[] **I have contents coverage of the type checked below.** A copy of my policy Declarations page is attached as evidence of coverage. I agree to keep coverage in force during the term of my lease.

Insurance Company Name: _____
 Homeowners Renters Business Owners Other: _____
Policy #: _____ **Limit \$:** _____ **Effective Date:** _____ **Term:** _____

Signature(s): _____ **Date:** _____



CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
JERRY LEE COLEMAN,
on behalf of himself and all others similarly situated
(b) County of Residence of First Listed Plaintiff Seminole County
(c) Attorneys (Firm Name, Address, and Telephone Number)
Scott B. Cosgrove, Esq., Leon Cosgrove LLC
255 Alhambra Circle, Suite 800
Coral Gables, Florida 33134

DEFENDANTS
CUBESMART, a Maryland
Real Estate Investment Trust
County of Residence of First Listed Defendant Pennsylvania
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 X 1
2 2
3 3
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Estate, etc.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District
6 Multidistrict Litigation

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1332
Brief description of cause:

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.
DEMAND \$ 500,000,000.00
CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE DOCKET NUMBER

DATE 11/30/2016 SIGNATURE OF ATTORNEY OF RECORD /s/Scott B. Cosgrove

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Cubsmart Hit with Suit Over Hidden Commissions](#)
