

IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO  
CIVIL DIVISION

GARRISON SOUTHFIELD PARK LLC )

Plaintiff, )

-vs- )

CLOSED LOOP REFINING AND )  
RECOVERY, INC., *et al.* )

Defendants. )

Case No. 16 CV 2317

Judge Michael Holbrook

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**PLAINTIFF’S MOTION FOR DEFAULT JUDGMENT**

Pursuant to Ohio Civil Rule 55, Plaintiff Garrison Southfield Park, LLC (“Garrison”) requests that the Court enter default judgment in its favor of and against Defendant Closed Loop Refining and Recovery, Inc. (“Closed Loop”) for:

(1) unpaid monthly rent, late fees, utility expenses, and accelerated rent in the amount of \$4,123,780.03, under the April 6, 2012 Lease Agreement and the April 15, 2014 First Amendment of Lease (together, the “Lease”) between Garrison and Closed Loop for the premises at 1675 Watkins Road, Columbus, OH 43207 (the “Property”); and

(2) the costs incurred, and to be incurred, by Garrison (the “Clean-Up Costs”) to clean-up the millions of pounds of cathode ray tubes (“CRT”), leaded glass, hazardous lead dust, and ancillary scrap material (together, the “CRT Waste”) that Closed Loop released throughout and abandoned at the Property in violation of the Lease and federal and state hazardous waste laws.

Garrison requests that the Court, upon entering a finding of liability on default against Closed Loop for the foregoing breaches of the Lease, set this matter for a damages hearing so

that Garrison may establish the amount of its damages, particularly its Clean-Up Costs, for the entry of a final judgment.

Garrison is entitled to the requested default judgment against Defendant Closed Loop because it has failed to plead or otherwise defend in this action.

A memorandum in support of this motion is attached hereto and incorporated herein by reference.

Respectfully submitted,

/s/ John F. Stock  
John F. Stock (0004921)  
BENESCH, FRIEDLANDER,  
COPLAN & ARONOFF LLP  
41 South High Street, Suite 2600  
Columbus, Ohio 43215  
Telephone: (614) 223-9345  
Facsimile: (614) 223-9330  
E-mail: jstock@beneschlaw.com

*Attorneys for Plaintiff Garrison Southfield  
Park, LLC*

**MEMORANDUM IN SUPPORT**

**I. Statement Of Facts**

Plaintiff Garrison is the owner of the Property. There is a commercial warehouse building on the Property. Garrison leased the Property to Closed Loop pursuant to Lease; Closed Loop used the Property for its CRT recycling operations. Garrison’s Complaint, ¶¶1, 2; Exhibits 1 and 2 to the Complaint. *See also* the Affidavit of Kelly Tamulonis (“Tamulonis Aff.”), the General Manager of the Property for Garrison, at ¶¶1 - 6.

Pursuant to Section 7 of the Lease, Defendant Closed Loop agreed to pay to Garrison monthly Base Rent as follows: (a) \$59,131.57 per month from 8/1/12 through 7/31/15; (b)

\$62,027.81 per month from 8/1/15 through 7/31/17; and (c) \$64,924.05 per month from 8/1/17 through 3/31/20. Complaint, ¶3; Tamulonis Aff., ¶7. Defendant Closed Loop has breached and is in default under the terms and conditions of the Lease by, *inter alia*: (a) failing to make the monthly Base Rent payments for the period from April 15, 2015 through February 10, 2017, totaling \$1,593,086.81; (b) failing to pay late fees totaling \$100,042.27 through February 10, 2017; and (c) failing to pay utilities expenses totaling \$823.36. Tamulonis Aff., ¶8.

As a result of Closed Loop's defaults under the Lease, on February 26, 2016, Garrison served Defendant Closed Loop with a Notice Of Termination Of Lease Agreement pursuant to Section 19 of the Lease. *See Exhibit 3* to the Complaint. On or about September 30, 2016, Defendant Closed Loop abandoned the Property. Tamulonis Aff., ¶9. Closed Loop left millions of pounds of its CRT Waste at the Property when it abandoned the Property. *Id.*

Garrison cannot find another tenant for the Property while the CRT Waste remains at the Property and the Property has not been fully remediated. Tamulonis Aff., ¶10.

Pursuant to Section 19.b(i) of the Lease and *Exhibit 3* to the Complaint, Garrison has declared that all installments of Rent for the remainder of the Term of the Lease (through March 31, 2020) to be immediately due and payable. Tamulonis Aff. ¶11. The total of accelerated rent due, through March 31, 2020, is \$2,429,727.49. *Id.* Thus, the total amount that Closed Loop owes to Garrison for payments due under the Lease is \$4,123,780.03. *Id.*

Pursuant to Section 10.b of the Lease, Closed Loop agreed, *inter alia*,

***\* \* \* Tenant shall take good care of the Premises and fixtures, and keep them in good repair and free from filth, [and] overloading . . . . At the end of the Term of this Lease or any extension or renewal thereof, Tenant shall quit and surrender the Premises broom clean in as good condition as when received by Tenant . . . . \* \* \* The provisions of this paragraph shall survive the expiration or earlier termination of this Lease.*** (Emphasis added).

Pursuant to Section 13 of the Lease, Tenant also agreed, *inter alia*,

*At the termination of this Lease, Tenant shall deliver the Premises in the same condition as received by it on the Commencement Date \* \* \*. \* \* \* Tenant's obligation to observe or perform this covenant shall survive the expiration or termination of this Lease. \* \* \** (Emphasis added).

Defendant Closed Loop has breached the Lease by polluting the Property with, and releasing and abandoning throughout the Property, the CRT Waste. Tamulonis Aff., ¶12.

Garrison has retained an environmental expert to manage the removal Closed Loop's CRT Waste from the 1675 Property. The environment expert has determined that it will cost millions of dollars to remove Closed Loop's CRT Waste and remediate the Property, including necessary abatement. The environmental expert will testify at the requested damages hearing on Garrison's default judgment to establish the amount of damages incurred, and to be incurred, by Garrison for Clean-Up Costs.

Garrison filed its Complaint in this action March 4, 2016, seeking, *inter alia*, to (1) obtain a writ of restitution to compel Closed Loop to vacate the 1675 Property; (2) recover damages from Closed Loop for its breaches of the Lease; and (3) an injunction requiring Closed Loop to perform the all clean-up of its CRT Waste.

Garrison served Closed Loop with a summons and the Complaint by delivery to Closed Loop at its office at the 1675 Property on March 8, 2016, pursuant to R.C. 1923.06(D)(2)(b) (*see **Exhibit A*** attached hereto), by posting a copy of a summons and the Complaint on the door of Closed Loop's office at the 1675 Property on March 8, 2016, pursuant to R.C. 1923.06(D)(2)(c) (*see **Exhibit B*** attached hereto), by sending a summons and the Complaint by ordinary mail to Closed Loop at its principal place of business in Phoenix, Arizona on March 30, 2016, after Closed Loop refused certified mail service at that principal place of business, pursuant to Civil Rule 4.6(C) (*see **Exhibits C and D*** attached hereto), and by sending a summons and the Complaint by certified mail to the Ohio Secretary of State on March 24, 2016, after Closed

Loop’s Ohio statutory agent notified the Court that it no longer acted as the statutory agent, pursuant to R.C. 1703.19 (*see* **Exhibits E and F**).

Closed Loop has not filed an answer to Garrison’s Complaint or otherwise appeared in this action. Garrison is entitled to a default judgment against Closed Loop.

Garrison is entitled to a judgment against Closed Loop in the following amounts:

- (1) **\$4,123,780.03** as the principal balance for unpaid monthly rent, late fees, utility expenses, and accelerated rent under the Lease;
- (2) damages for Garrison’s Clean-Up Costs, in an amount to be determined at a damages hearing;
- (2) interest at the legal rate from the date judgment is entered in favor of Garrison;
- and
- (3) Garrison’s costs and expenses incurred herein, including attorneys’ fees pursuant to the Lease.

The Court will need to retain jurisdiction of this case to award Garrison any additional post-damages hearing Clean-Up Costs it may incur once the environmental clean-up of Closed Loop’s CRT Waste at the Property has been completed.

**II. LAW AND ARGUMENT**

Ohio Civil Rule 55(A) provides as follows:

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided in these rules, the party entitled to a judgment by default shall apply in writing or orally to the court therefor; \* \* \* If a party against whom judgment by default is sought has appeared in the action, he (or, if appearing by representative, his representative) shall be served with written notice of the application for judgment at least seven days prior to the hearing on such application. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order

such references as it deems necessary and proper and shall when applicable accord a right of trial by jury to the parties.

Closed Loop is in default. Garrison is entitled to a default judgment against Closed Loop. Garrison asks the Court to (1) enter a finding of default on liability as to Closed Loop's breaches of the Lease; and (2) set this matter for a hearing on the damages that Garrison has incurred as a result of Closed Loop's breaches of the Lease. The damages hearing on Garrison's default judgment against Closed Loop relating to the contiguous property at 1655 Watkins Road (Case No. 15-CV-6697) is set for **Monday, April 24 at 9 a.m. Garrison asks the Court to set the damages hearing for this case (the 1675 Watkins Road Property) at the same time.**

Garrison is serving this Motion for Default Judgment upon Closed Loop's Arizona counsel by email and overnight delivery as set forth in the certificate of service attached hereto. Garrison also is serving Ohio counsel for the individual guarantors who are defendants in this case.

Respectfully submitted,

/s/ John F. Stock

John F. Stock (0004921)  
BENESCH, FRIEDLANDER,  
COPLAN & ARONOFF LLP  
41 South High Street, Suite 2600  
Columbus, Ohio 43215  
Telephone: (614) 223-9345  
Facsimile: (614) 223-9330  
E-mail: jstock@beneschlaw.com

*Attorneys for Plaintiff Garrison Southfield  
Park, LLC*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true copy of the foregoing was served upon the following by email and ordinary mail delivery this 13th day of February, 2016:

Closed Loop Refining And Recovery, Inc.  
c/o Dennis L. Hall  
d.l.hall, attorney, pllc  
3033 North Central  
Suite 810  
Phoenix, AZ 85012  
[dennis@dlhall.net](mailto:dennis@dlhall.net)

James Robert Rishel  
300 E. Broad Street, Suite 450  
Columbus, Ohio 43215  
[rrishel@rrgovlaw.com](mailto:rrishel@rrgovlaw.com)

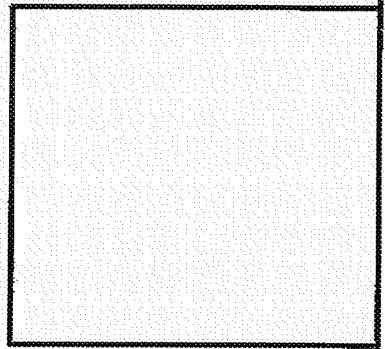
*Attorney for Defendants Brent  
Benham, David Cauchi, and Brian LaPoint*

/s/ John F. Stock  
John F. Stock

MARYELLEN O'SHAUGHNESSY  
CLERK OF THE FRANKLIN COUNTY COMMON PLEAS COURT, COLUMBUS, OHIO 43215  
CIVIL DIVISION

GARRISON SOUTHFIELD PARK LLC,  
PLAINTIFF,  
VS.  
CLOSED LOOP REFINING & RECOVERY INC,  
DEFENDANT.

16CV-03-2317  
CASE NUMBER  
79839359986  
TRACKING ID



\*\*\*\* PERSONAL/RESIDENCE SERVICE RETURN \*\*\*\*

ATTORNEY: 4921 JOHN F. STOCK  
(614) 223-9300

THE STATE OF OHIO, FRANKLIN COUNTY, SS.  
TO THE PROCESS SERVER OF SAID COUNTY, GREETINGS:

YOU ARE HEREBY COMMANDED, TO SERVE FORTHWITH THE WITHIN COPY OF  
ORIGINAL SUMMONS AND OTHER DOCUMENTS TO BE SERVED

UPON: CLOSED LOOP REFINING & RECOVERY INC  
1675 WATKINS ROAD  
COLUMBUS OH 43207-0000 ADDR: 3

WITNESS MY HAND AND SEAL OF SAID COURT, THIS 07 DAY OF MARCH, 2016.

*[Signature]*  
DEPUTY CLERK

MARYELLEN O'SHAUGHNESSY  
CLERK OF THE COMMON PLEAS  
FRANKLIN COUNTY, OHIO

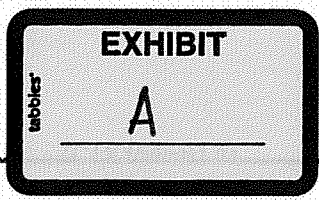
\*\*\*\*\*  
ON 3/8 2016, I SERVED THE WITHIN NAMED CLOSED  
LOW RESIDENCE BY DEPOSITING SERVICE TO FEMALE EMPLOYEE WHO WITH  
A TRUE COPY OF PROCESS AND OTHER ACCOMPANYING DOCUMENTS TO BE SERVED AS  
COMMANDED HEREINABOVE: WOMAN NOT BECAUSE NAME

PERSONNALLY; OR  
BY LEAVING SAME AT THE USUAL PLACE OF RESIDENCE OF THE WITHIN NAMED  
PARTY TO BE SERVED WITH A PERSON OF SUITABLE AGE AND DISCRETION THEN  
RESIDING AT SUCH RESIDENCE.

I WAS UNABLE TO SERVE WITHIN NAMED FOR THE FOLLOWING REASON:

\_\_\_\_\_

BY *[Signature]* PROCESS SERVER  
SERVICE \$ \_\_\_\_\_  
MILES \$ \_\_\_\_\_  
TOTAL FEES \$ \_\_\_\_\_  
PLUF: CLOSED LOOP REFINING & RECOVERY INC

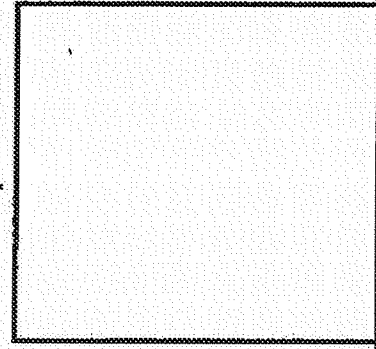




MARYELLEN O'SHAUGHNESSY  
CLERK OF THE FRANKLIN COUNTY COMMON PLEAS COURT, COLUMBUS, OHIO 43215  
CIVIL DIVISION

GARRISON SOUTHFIELD PARK LLC,  
PLAINTIFF,  
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CLOSED LOOP REFINING & RECOVERY INC,  
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79839359986  
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\*\*\*\* PERSONAL/RESIDENCE SERVICE RETURN \*\*\*\*

ATTORNEY: 4921 JOHN F. STOCK  
(614) 223-9300

THE STATE OF OHIO, FRANKLIN COUNTY, SS.  
TO THE PROCESS SERVER OF SAID COUNTY, GREETINGS:

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ORIGINAL SUMMONS AND OTHER DOCUMENTS TO BE SERVED

UPON: CLOSED LOOP REFINING & RECOVERY INC  
1675 WATKINS ROAD  
COLUMBUS OH 43207-0000 ADDR: 3

WITNESS MY HAND AND SEAL OF SAID COURT, THIS 07 DAY OF MARCH, 2016.

DEPUTY CLERK

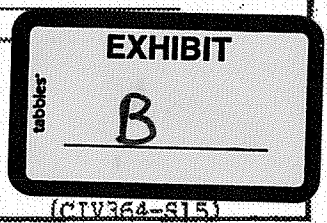
MARYELLEN O'SHAUGHNESSY  
CLERK OF THE COMMON PLEAS  
FRANKLIN COUNTY, OHIO

\*\*\*\*\*  
ON 3/8 2016, I SERVED THE WITHIN NAMED CLOSED  
~~LOOP REFINING & RECOVERY INC~~ BY ~~INITIAL SERVICE~~ WITH  
A TRUE COPY OF PROCESS AND OTHER ACCOMPANYING DOCUMENTS TO BE SERVED AS  
COMMANDED HEREINABOVE:

PERSONNALLY; OR  
BY LEAVING SAME AT THE USUAL PLACE OF RESIDENCE OF THE WITHIN NAMED  
PARTY TO BE SERVED WITH A PERSON OF SUITABLE AGE AND DISCRETION THEN  
RESIDING AT SUCH RESIDENCE.

I WAS UNABLE TO SERVE WITHIN NAMED FOR THE FOLLOWING REASON:

BY PROCESS SERVER  
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TOTAL FEES \$ \_\_\_\_\_  
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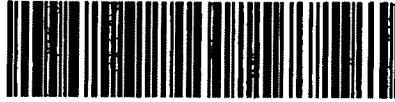
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MARYELLEN O'SHAUGHNESSY  
FRANKLIN COUNTY CLERK OF COURTS  
373 SOUTH HIGH STREET  
COLUMBUS, OHIO 43215-4579

**CERTIFIED MAIL**

**USPS CERTIFIED MAIL**



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Zip 43215 \$ 007.59<sup>0</sup>  
City: Columbus, OH  
01388617 MAR 08 2018

16CV-03-2317 H ADDR: 2  
4921 JOHN F. STOCK

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FRANKLIN CO. OHIO  
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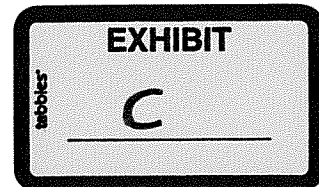
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CLOSED LOOP REFINING & RE  
ATTN BRENT BENHAM  
SUITE 130  
438 S 59TH AVE  
PHOENIX, AZ  
85043

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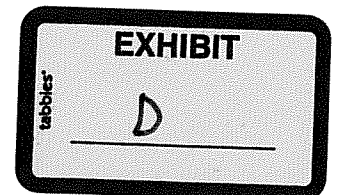
CLOSED LOOP REFINING  
ATTN BRENT BENHAM  
SUITE 130  
435 S 59TH AVE  
PHOENIX, AZ  
85043

16CV-03-2317 H

GARRISON SOUTHFIELD P  
VS  
CLOSED LOOP REFINING

SERVICE ITEM 01  
ORIGINAL SUMMONS

CIV361



E2513 - H2

CT

March 10, 2016

Franklin County Common Pleas Court  
Clerk of Court,  
Franklin County Courthouse, 23rd Floor,  
345 South High Street,  
Columbus, OH 43215

Re GARRISON SOUTHFIELD PARK, LLC, Plif vs. CLOSED LOOP REFINING AND RECOVERY, INC , et al , Dfr

Case No 16CV002317

Dear Sir/Madam

According to our records our statutory representation services were discontinued and all process sent to the last known address on our records was returned as undeliverable.

Since we do not have any other addresses in our files to which we can forward the papers, we are returning them to you and filing resignation of agent in all states where permitted

Please understand that we take no position as to the validity of the service. We are merely stating that after reasonable efforts, we do not have any address to which to forward the papers.

CT was unable to forward.

Very truly yours,

CT Corporation System

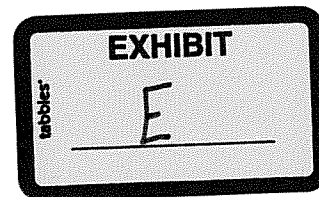
Log# 528790919

Sent By Regular Mail

cc JOHN F STOCK  
Denesch, Friedlander, Coplan & Aronoff LLP  
41 S. High St , Suite 2600,  
Columbus, OH 43215

(Returned To)

Franklin County Common Pleas Court  
Clerk of Court,  
Franklin County Courthouse, 23rd Floor,  
345 South High Street,  
Columbus, OH 43215



OD456

K43

E2517

**UNITED STATES  
POSTAL SERVICE.**

FILED  
COMMON PLEAS COURT  
FRANKLIN CO. OHIO

2016 MAR 30 PM 3:45

CLERK OF COURTS-CV

Date Produced: 03/28/2016

COC:

The following is the delivery information for Certified Mail™/RRE item number 9214 8901 1952 2801 5771 19. Our records indicate that this item was delivered on 03/24/2016 at 09:42 a.m in COLUMBUS, OH 43215. The scanned image of the recipient information is provided below.

Signature of Recipient :

*William S Greene*  
*William S Greene*

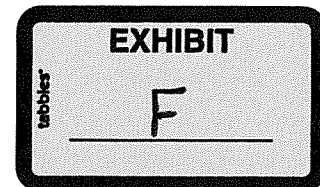
Address of Recipient :

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United States Postal Service

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Customer Reference Number: 4321416CV002317GARR

SIN THE COMMON PLEAS COURT OF  
FRANKLIN COUNTY, OHIO  
CIVIL DIVISION

GARRISON SOUTHFIELD PARK, LLC,	)	
	)	
Plaintiff,	)	CASE No. 16-CV-002317
	)	
vs.	)	JUDGE HOLBROOK
	)	
CLOSED LOOP REFINING AND	)	
RECOVERY, INC. , <i>et al.</i> ,	)	
	)	
Defendants.	)	

AFFIDAVIT OF KELLY TAMULONIS

STATE OF OHIO :  
COUNTY OF FRANKLIN SS :

Kelly Tamulonis, being first duly cautioned and sworn, states under oath as follows:

1. I make the statements in this affidavit based on my personal knowledge and on information available to me.
2. I have been employed by Jones Lang LaSalle (“JLL”) since January 2014.
3. My title at JLL is “General Manager.” As a General Manager, it is my duty to manage commercial and industrial properties owned by JLL’s clients and that JLL assigns to me to manage.
4. Garrison Southfield Park, LLC (“Garrison”) owns the real estate located at 1675 Watkins Road, Columbus, Ohio (the “Property”). In July 2014, Garrison retained JLL to manage the Property.
5. JLL assigned the Property to me to manage. I have been managing the Property since July 2014.
6. Pursuant to my management of the Property, I am familiar with the April 6, 2012 Lease Agreement and the April 15, 2014 First Amendment of Lease (together, the “Lease”) between Garrison and Closed Loop Refining and Recovery, Inc. (“Closed Loop”), pursuant to which Garrison leased the Property to Closed Loop; Closed Loop occupied and used the Property for its cathode ray tube recycling operations.
7. Pursuant to Section 7 of the Lease, Defendant Closed Loop agreed to pay to Garrison monthly Base Rent as follows: (a) \$59,131.57 per month from 8/1/12 through 7/31/15;

(b) \$62,027.81 per month from 8/1/15 through 7/31/17; and (c) \$64,924.05 per month from 8/1/17 through 3/31/20.

8. Defendant Closed Loop has breached and is in default under the terms and conditions of the Lease by, *inter alia*: (a) failing to make the monthly Base Rent payments for the period from April 1, 2015 through February 10, 2017, totaling \$1,593,086.81; (b) failing to pay late fees totaling \$100,042.27 through February 10, 2017; and (c) failing to pay utilities expenses totaling [\$823.36].


9. On or about September 30, 2016, Closed Loop abandoned the Property. Closed Loop left millions of pounds of CRT Waste at the Property when it abandoned the Property.

10. Garrison cannot find another tenant for the Property while the hazardous CRT Waste remains at the Property and the Property has not been fully remediated.

11. Pursuant to Section 19.b(i) of the Lease and Exhibit 3 to the Complaint, Garrison has declared that all installments of Rent for the remainder of the Term of the Lease (through March 31, 2020) to be immediately due and payable. The total of accelerated rent due, through March 31, 2020, is \$2,429,727.49. Thus, the total amount that Closed Loop owes to Garrison for payments due under the Lease is \$4,123,780/03.

12. Defendant Closed Loop has breached the Lease by polluting the Property with, and releasing and abandoning throughout the Property, the CRT Waste.


FURTHER AFFIANT SAYETH NAUGHT.

  
\_\_\_\_\_  
Kelly Tamulonis

Sworn to and subscribed in my presence this 13<sup>th</sup> day of February, 2017.



**ASHLEY E SEARLES**  
Notary Public, State of Ohio  
My Comm. Expires 01/18/2022

  
\_\_\_\_\_  
Notary Public