

ELECTRONICALLY FILED

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON DIVISION**

TRUIST BANK
F/K/A BRANCH BANKING AND TRUST COMPANY

PLAINTIFF

vs.

CIVIL CASE NO. _____

AGTECH SCIENTIFIC GROUP, LLC,
a Delaware limited liability company;
AGTECH SCIENTIFIC CORP.,
a Nevada corporation;
CLEAR SKY ENTERPRISES, INC.,
a Kentucky corporation;
EMERALD ASSETS, INC.,
a Kentucky corporation;
DOUBLE DUTCH LOGISTICS, INC.,
a Kentucky corporation;
MID-AMERICAN TRUCKING, INC.,
a Kentucky corporation;
COLOR POINT, LLC,
a Kentucky limited liability company;
AGTECH SCIENTIFIC, LLC,
a Kentucky limited liability company;
EPS SCIENTIFIC, LLC,
a Kentucky limited liability company;
VWD HOLDINGS, LLC,
a Delaware limited liability company;

DEFENDANTS

COMPLAINT

1. Plaintiff, Truist Bank f/k/a Branch Banking and Trust Company (“Truist”), is a North Carolina banking corporation authorized to transact business in the Commonwealth of Kentucky, with an office located at 111 Lookout Farm Drive, Crestview Hills, Kenton County, Kentucky 41017.

2. Upon information and belief, the Defendant, AgTech Scientific Group, LLC (“AgTech Scientific Group”), is a foreign limited liability company organized and existing under the laws of the State of Delaware. Its principal office is located at 1077 Cane Ridge Road, Paris, Bourbon County, Kentucky 40361. Its Registered Agent for service of process in the Commonwealth of Kentucky is James Peffer, 1077 Cane Ridge Road, Paris, Bourbon County, Kentucky 40361.

3. Upon information and belief, the Defendant, AgTech Scientific Corp., is a foreign corporation incorporated and existing under the laws of the State of Nevada. The last known address for said Defendant is 333 Cleveland Drive, Paris, Bourbon County, Kentucky 40361. Its Registered Agent for service process is C T Corporation System, 701 South Carson Street, Suite 200, Carson City, Nevada 89701. The claim of AgTech Scientific Corp. arises out of its transacting business in the Commonwealth of Kentucky. By virtue of KRS § 454.210, the Secretary of State of the Commonwealth of Kentucky is deemed to be the statutory agent for said Defendant.

4. Upon information and belief, the Defendant, Clear Sky Enterprises, Inc. (“Clear Sky Enterprises”), is a corporation incorporated and existing under the laws of the Commonwealth of Kentucky. Its principal office is located at 1077 Cane Ridge Road, Paris, Bourbon County, Kentucky 40361. Its Registered Agent for service of process in the Commonwealth of Kentucky is AgTech Scientific Group, LLC, 1077 Cane Ridge Road, Paris, Bourbon County, Kentucky 40361.

5. Upon information and belief, the Defendant, Emerald Assets, Inc. (“Emerald Assets”), is a corporation incorporated and existing under the laws of the Commonwealth of Kentucky. Its principal office is located at 1077 Cane Ridge Road, Paris, Bourbon County,

Kentucky 40361. Its Registered Agent for service of process in the Commonwealth of Kentucky is AgTech Scientific Group, LLC, 1077 Cane Ridge Road, Paris, Bourbon County, Kentucky 40361.

6. Upon information and belief, the Defendant, Double Dutch Logistics, Inc. (“Double Dutch Logistics”), is a corporation incorporated and existing under the laws of the Commonwealth of Kentucky. Its principal office is located at 1077 Cane Ridge Road, Paris, Bourbon County, Kentucky 40361. Its Registered Agent for service of process in the Commonwealth of Kentucky is AgTech Scientific Group, LLC, 1077 Cane Ridge Road, Paris, Bourbon County, Kentucky 40361.

7. Upon information and belief, the Defendant, Mid-American Trucking, Inc. (“Mid-American Trucking”), is a corporation incorporated and existing under the laws of the Commonwealth of Kentucky. Its principal office is located at 1077 Cane Ridge Road, Paris, Bourbon County, Kentucky 40361. Its Registered Agent for service of process in the Commonwealth of Kentucky is AgTech Scientific Group, LLC, 1077 Cane Ridge Road, Paris, Bourbon County, Kentucky 40361.

8. Upon information and belief, the Defendant, Color Point, LLC (“Color Point”), is a limited liability company organized and existing under the laws of the Commonwealth of Kentucky. Its principal office is located at 1077 Cane Ridge Road, Paris, Bourbon County, Kentucky 40361. Its Registered Agent for service of process in the Commonwealth of Kentucky is AgTech Scientific Group, LLC, 1077 Cane Ridge Road, Paris, Bourbon County, Kentucky 40361.

9. Upon information and belief, the Defendant, AgTech Scientific, LLC (“AgTech Scientific”), is a limited liability company organized and existing under the laws of the

Commonwealth of Kentucky. Its principal office is located at 333 Cleveland Road, Paris, Bourbon County, Kentucky 40361. Its Registered Agent for service of process in the Commonwealth of Kentucky is AgTech Scientific Group, LLC, 1077 Cane Ridge Road, Paris, Bourbon County, Kentucky 40361.

10. Upon information and belief, the Defendant, EPS Scientific, LLC (“EPS Scientific”), is a limited liability company organized and existing under the laws of the Commonwealth of Kentucky. Its principal office is located at 333 Cleveland Road, Paris, Bourbon County, Kentucky 40361. Its Registered Agent for service of process in the Commonwealth of Kentucky is AgTech Scientific Group, LLC, 1077 Cane Ridge Road, Paris, Bourbon County, Kentucky 40361.

11. Upon information and belief, the Defendant, VWD Holdings, LLC (“VWD Holdings”), is a foreign limited liability company organized and existing under the laws of the State of Delaware. The last known address for said Defendant is unknown. Its Registered Agent for service process is The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801. The claim of VWD Holdings arises out of its transacting business in the Commonwealth of Kentucky. By virtue of KRS § 454.210, the Secretary of State of the Commonwealth of Kentucky is deemed to be the statutory agent for said Defendant.

12. Venue in this Court is appropriate pursuant to 28 U.S.C. § 1391(a) as, among other things, the real property that is the subject of this matter is located in this judicial district and this is the judicial district in which a substantial part of the events or omissions giving rise to Plaintiff’s claims occurred.

13. Further, jurisdiction and venue are proper in this Court pursuant to 28 U.S.C. § 1332 and 28 U.S.C. § 1391 as the parties’ citizenship is completely diverse; the amount in

controversy in this matter exceeds, exclusive of costs and interest, the sum of \$75,000.00; and the Defendants are subject to personal jurisdiction in this judicial district.

14. The Defendants are subject to the jurisdiction of this Court because, among other things, the claims alleged herein arose out of their doing business in this Commonwealth and because they have agreed to litigate this action in this Court.

COUNT I
(Breach of Note 3410-00001)

15. Truist restates, re-alleges and reaffirms all averments set forth in numerical paragraphs 1 – 14 above, the same as if set forth herein at length.

16. On or about December 6, 2019, the Defendants, AgTech Scientific Group, as Borrower, and AgTech Scientific Corp., Clear Sky Enterprises, Emerald Assets, Double Dutch Logistics, Mid-American Trucking, Color Point, AgTech Scientific, EPS Scientific and VWD Holdings, as Guarantors (collectively, “Guarantors”), executed and delivered to Truist a Loan Agreement (the “Loan Agreement”). A true and exact copy of the Loan Agreement is attached to this Complaint as Exhibit A and made a part hereof.

17. Pursuant to the terms of the Loan Agreement, on or about December 6, 2019, the Defendant, AgTech Scientific Group, executed and delivered to Truist a Promissory Note containing a line of credit in the maximum principal amount of \$15,000,000.00 (“Note 3410-00001”). A true and exact copy of Note 3410-00001 is attached to this Complaint as Exhibit B and made a part hereof.

18. Note 3410-00001 was and is in payment and/or non-payment default not later than October 13, 2020 due to, among other things:

- (i) the failure of AgTech Scientific Group to furnish all financial statements as required in the Loan Documents within forty-five (45) days of the end of each fiscal quarter, including the quarter ending June 30, 2020; and/or

- (ii) pursuant to the cross-default provisions contained in Note 3410-00001, the failure of AgTech Scientific Group to make the payment of principal and interest due October 1, 2020, and the subsequent failures to make principal and interest payments due on or after November 1, 2020 under Note 3410-00003 (defined below).

19. Truist as of not later than November 12, 2020 has declared, and does hereby declare to the extent necessary, that the entire balance of principal and interest is presently due and owing.

20. As of June 28, 2021, the Defendant, AgTech Scientific Group, is indebted to Truist on Note 3410-00001 in the amount of \$16,365,577.61, comprised of principal in the amount of \$14,850,866.24, interest in the amount of \$1,412,258.94, late charges in the amount of \$62,273.02 and other fees and costs in the amount of \$40,179.41, plus accrued and accruing attorneys' fees, court costs and its expenses.

21. Note 3410-00001 provides that if Truist does not receive any payment due under Note 3410-00001 within ten (10) days of the date it is due, then it may charge a late charge of five percent (5.00%) of any installment past due.

22. Note 3410-00001 further provides that upon maturity, whether by acceleration or otherwise, or upon the occurrence of an Event of Default, the applicable rate of interest on Note 3410-00001 shall be increased to the fixed rate of 15.00% per annum. As a result of the aforesaid default in payment, Truist has elected, and does hereby elect, to increase the applicable rate of interest on Note 3410-00001 to the fixed rate of 15.00% per annum.

23. The applicable loan documents provide that in the event that there is a default, Truist is entitled to recover its reasonable costs and expenses of suit, including, but not limited to, its attorneys' fees and costs.

COUNT II
(Breach of Note 3410-00003)

24. Truist restates, re-alleges and reaffirms all averments set forth in numerical paragraphs 1 – 23 above, the same as if set forth herein at length.

25. Pursuant to the terms of the Loan Agreement, on or about December 6, 2019, the Defendant, AgTech Scientific Group, further executed and delivered to Truist a Promissory Note in the principal amount of \$15,000,000.00 (“Note 3410-00003”). A true and exact copy of Note 3410-00003 is attached to this Complaint as Exhibit C and made a part hereof.

26. Note 3410-00003 was and is in payment and/or non-payment default not later than October 13, 2020 due to, among other things:

- (i) the failure of AgTech Scientific Group to furnish all financial statements as required in the Loan Documents within forty-five (45) days of the end of each fiscal quarter, including the quarter ending June 30, 2020; and/or
- (ii) the failure of AgTech Scientific Group to make the payment of principal and interest due October 1, 2020, and the subsequent failures to make principal and interest payments due on or after November 1, 2020.

27. Truist as of not later than November 12, 2020 has declared, and does hereby declare to the extent necessary, that the entire balance of principal and interest is presently due and owing.

28. As of June 25, 2021, the Defendant, AgTech Scientific Group, is indebted to Truist on Note 3410-00003 in the amount of \$15,792,711.75, comprised of principal in the amount of \$14,345,000.00, interest in the amount of \$1,371,928.78, returned payment fee in the amount of \$150.00 and late charges in the amount of \$75,632.97.

29. Note 3410-00003 provides that if Truist does not receive any payment due under Note 3410-00003 within ten (10) days of the date it is due, then it may charge a late charge of five percent (5.00%) of any installment past due.

30. Note 3410-00003 further provides that upon maturity, whether by acceleration or otherwise, or upon the occurrence of an Event of Default, the applicable rate of interest on Note 3410-00003 shall be increased to the fixed rate of 15.00% per annum. As a result of the aforesaid default in payment, Truist has elected, and does hereby elect, to increase the applicable rate of interest on Note 3410-00003 to the fixed rate of 15.00% per annum.

31. The applicable loan documents provide that in the event that there is a default, Truist is entitled to recover its reasonable costs and expenses of suit, including, but not limited to, its attorneys' fees and costs.

COUNT III
(Breach of SWAP Agreement)

32. Truist restates, re-alleges and reaffirms all averments set forth in numerical paragraphs 1 – 31 above, the same as if set forth herein at length.

33. On or about November 18, 2019, Truist and AgTech Scientific Group executed and delivered a Master Agreement and Schedule pursuant to the International Swaps and Derivatives Associations, Inc. (the "SWAP Agreement"). A true and exact copy of the SWAP Agreement is attached to this Complaint as Exhibit D and made a part hereof

34. The SWAP Agreement was and is in payment and/or non-payment default not later than October 13, 2020, due to, among other things:

- (i) pursuant to the cross-default provisions contained in the SWAP Agreement, the failure of AgTech Scientific Group to make the payment of principal and interest due October 1, 2020, and the subsequent failures to make principal and interest payments due on or after November 1, 2020 under Note 3410-00003.

35. Truist as of not later than November 12, 2020 has declared, and does hereby declare to the extent necessary, that the entire balance of principal and interest is presently due and owing.

36. The approximate balance owing to cancel the Swap Agreement is \$616,343.53, plus accrued and accruing attorneys' fees, court costs and its expenses.

37. The Swap Agreement further provides that upon the default in the performance of any payment obligation, the applicable rate of interest on the Swap Agreement shall be a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount plus 1% per annum.

38. The applicable loan documents provide that in the event that there is a default, Truist is entitled to recover its reasonable costs and expenses of suit, including, but not limited to, its attorneys' fees and costs.

COUNT IV
(Breach of Note 3436-00001)

39. Truist restates, re-alleges and reaffirms all averments set forth in numerical paragraphs 1 – 38 above, the same as if set forth herein at length.

40. On or about April 10, 2020, the Defendants, AgTech Scientific, as Borrower, and Color Point, AgTech Scientific Group, EPS Scientific, AgTech Scientific Corp., VWD Holdings, Clear Sky Enterprises, Emerald Assets, Double Dutch Logistics, and Mid-American Trucking, as Guarantors, executed and delivered to Truist a Loan Agreement (the "Note 3436-00001 Loan Agreement"). A true and exact copy of the Note 3436-00001 Loan Agreement is attached to this Complaint as Exhibit E and made a part hereof.

41. Pursuant to the terms of the Note 3436-00001 Loan Agreement, on or about April 10, 2020, the Defendant, AgTech Scientific executed and delivered to Truist a Promissory Note

in the principal amount of \$3,000,000.00 (“Note 3436-00001”). A true and exact copy of Note 3436-00001 is attached to this Complaint as Exhibit F and made a part hereof.

42. Note 3436-00001 was and is in payment and/or non-payment default not later than October 13, 2020 due to, among other things:

- (i) the failure of AgTech Scientific Group to furnish all financial statements as required in the Loan Documents within forty-five (45) days of the end of each fiscal quarter, including the quarter ended June 30, 2020;
- (ii) the failure of AgTech Scientific to furnish evidence of its sale of Hemp (as defined in the Loan Documents) resulting in revenues of not less than \$1,000,000 prior to June 30, 2020, an additional \$1,000,000 prior to July 31, 2020, and an additional \$1,000,000 prior to August 31, 2020; and/or
- (iii) pursuant to the cross-default provisions contained in Note 3436-00001, the failure of AgTech Scientific Group to make the payment of principal and interest due October 1, 2020, and the subsequent failures to make principal and interest payments due on or after November 1, 2020 under Note 3410-00003.

43. Truist as of not later than November 12, 2020 has declared, and does hereby declare to the extent necessary, that the entire balance of principal and interest is presently due and owing.

44. As of June 25, 2021, the Defendant, AgTech Scientific, is indebted to Truist on Note 3436-00001 in the amount of \$3,268,906.06, comprised of principal in the amount of \$2,949,190.32, interest in the amount of \$276,917.13, late charges in the amount of \$12,924.25, legal fees in the amount of \$26,599.36 and other fees and costs in the amount of \$3,275.00, plus accrued and accruing attorneys’ fees, court costs and its expenses.

45. Note 3436-00001 provides that if Truist does not receive any payment due under Note 3436-00001 within ten (10) days of the date it is due, then it may charge a late charge of five percent (5.00%) of any installment past due.

46. Note 3436-00001 further provides that upon maturity, whether by acceleration or otherwise, or upon the occurrence of an Event of Default, the applicable rate of interest on Note 3436-00001 shall be increased to the fixed rate of 15.00% per annum. As a result of the aforesaid default in payment, Truist has elected, and does hereby elect, to increase the applicable rate of interest on Note 3436-00001 to the fixed rate of 15.00% per annum.

47. The applicable loan documents provide that in the event that there is a default, Truist is entitled to recover its reasonable costs and expenses of suit, including, but not limited to, its attorneys' fees and.

COUNT V

(Breach of Mortgage – Color Point Property – Appointment of Receiver)

48. Truist restates, re-alleges and reaffirms all averments set forth in numerical paragraphs 1 – 47 above, the same as if set forth herein at length.

49. On or about December 6, 2019, the Defendant, Color Point, executed and delivered to Truist a Mortgage of Real Estate (the “Color Point Mortgage”) on certain parcel(s) of real property located in Bourbon County, Kentucky, as more fully described therein (the “Color Point Property”). A recorded copy of the Color Point Mortgage is attached to this Complaint as Exhibit G and made a part hereof.

50. On or about December 6, 2019, the Defendant, Color Point, executed and delivered to Truist an Assignment of Leases and Rents (the “Color Point Assignment”) regarding rents on, among other things, the Color Point Property, as more fully provided therein. A recorded copy of the Color Point Assignment is attached to this Complaint as Exhibit H and made a part hereof.

51. The Color Point Mortgage contains a “cross-collateralization” and/or “additional indebtedness” clause which provides that, in addition to Note 3410-00001 and Note 3410-00003,

the Color Point Mortgage further secures all additional obligations, debts and liabilities, plus interest thereon, of the Defendants, Color Point and AgTech Scientific Group (the “Color Point Mortgage Cross-Collateralization Clause”).

52. Pursuant to the Color Point Mortgage Cross-Collateralization Clause, the outstanding amount of indebtedness due under Note 3436-00001 is further secured by the Color Point Mortgage.

53. The Color Point Mortgage requires the Defendant, Color Point, to maintain the Color Point Property in good order and condition and keep same insured.

54. Pursuant to the terms of the Color Point Mortgage and Color Point Assignment, the Defendant, Color Point, sold, assigned, transferred and set over to Truist all rents, issues and profits from the Color Point Property, including, with limitation, the rents from the leases (the “Color Point Property Rents”).

55. Pursuant to KRS § 425.600, Fed. R. Civ. P. 66 and/or the terms of the Color Point Mortgage and Color Point Assignment, Truist hereby seeks the appointment of a receiver for the Color Point Property.

COUNT VI
(Breach of Mortgage – AgTech Property – Appointment of Receiver)

56. Truist restates, re-alleges and reaffirms all averments set forth in numerical paragraphs 1 – 55 above, the same as if set forth herein at length.

57. On or about April 10, 2020, AgTech Scientific, executed and delivered to Truist a Mortgage of Real Estate and Security Agreement (the “AgTech Mortgage”) on the certain parcel(s) of real property and associated fixtures located in Bourbon County, Kentucky, as more fully described therein (the “AgTech Scientific Property”). A recorded copy of the AgTech Mortgage is attached to this Complaint as Exhibit I and made a part hereof.

58. On or about April 10, 2020, the Defendant, AgTech Scientific, executed and delivered to Truist an Assignment of Leases and Rents (the “AgTech Assignment”) regarding rents on, among other things, the AgTech Scientific Property, as more fully provided therein. A recorded copy of the AgTech Assignment is attached to this Complaint as Exhibit J and made a part hereof.

59. The AgTech Mortgage contains a “cross-collateralization” and/or “additional indebtedness” clause which provides that, in addition to Note 3436-00001, the AgTech Mortgage further secures all additional obligations, debts and liabilities, plus interest thereon, of the Defendant, AgTech Scientific (the “AgTech Mortgage Cross-Collateralization Clause”).

60. Pursuant to the AgTech Mortgage Cross-Collateralization Clause, the outstanding amount of indebtedness due under Note 3410-00001 and Note 3410-00003 are further secured by the AgTech Mortgage.

61. The AgTech Mortgage requires the Defendant, AgTech Scientific, to maintain the AgTech Scientific Property in good order and condition and keep same insured.

62. Pursuant to the terms of the AgTech Mortgage and AgTech Assignment, the Defendant, AgTech Scientific, sold, assigned, transferred and set over to Truist all rents, issues and profits from the AgTech Scientific Property, including, with limitation, the rents from the leases (the “AgTech Scientific Property Rents”).

63. Pursuant to KRS § 425.600, Fed. R. Civ. P. 66 and/or the terms of the AgTech Mortgage and AgTech Assignment, Truist hereby seeks the appointment of a receiver for the AgTech Scientific Property.

COUNT VII

(Breach of Security Agreement – Collateral – Appointment of Receiver)

64. Truist restates, re-alleges and reaffirms all averments set forth in numerical paragraphs 1 – 63 above, the same as if set forth herein at length.

65. On or about December 6, 2019, the Defendants, AgTech Scientific Group, Color Point, AgTech Scientific, EPS Scientific, AgTech Scientific Corp., VWD Holdings, Clear Sky Enterprises, Emerald Assets, Double Dutch Logistics and Mid-American Trucking, executed and delivered to Truist a Security Agreement (the “Security Agreement”) whereby they granted Truist a security interest on, among other things, substantially all of their assets including, but not limited to, all of their Accounts, Inventory, Biological Assets, Equipment, Investment Property, Instruments, Deposit Accounts, Chattel Paper, Goods, Farm Products, Extracted collateral, Letter-of-Credit Rights, Documents of Title, Commercial Tort Claim(s), Money, Software, Vehicles, General Intangibles, Supporting Obligations and Obligations, all as more fully described in the Security Agreement (collectively, the “Collateral”). A true and exact copy of the Security Agreement is attached to this Complaint as Exhibit K and made a part hereof.

66. Upon information and belief, the Collateral is in the possession, custody, or control of the Defendants, AgTech Scientific Group, Color Point, AgTech Scientific, EPS Scientific, AgTech Scientific Corp., VWD Holdings, Clear Sky Enterprises, Emerald Assets, Double Dutch Logistics and/or Mid-American Trucking.

67. The Security Agreement provides that in the event that there is a default, Truist is entitled to recover its reasonable costs and expenses of suit, including, but not limited to, its attorneys’ fees and costs.

68. Pursuant to KRS § 425.600, Fed. R. Civ. P. 66 and/or the terms of the Security Agreement, Truist hereby seeks the appointment of a receiver for the Collateral.

COUNT VIII

(Personal Guarantees – Note 3410-00001 and Note 3410-00003)

69. Truist restates, re-alleges and reaffirms all averments set forth in numerical paragraphs 1 – 68 above, the same as if set forth herein at length.

70. On or about December 6, 2019, the Defendants, AgTech Scientific Corp., Clear Sky Enterprises, Emerald Assets, Double Dutch Logistics, Mid-American Trucking, Color Point, AgTech Scientific, EPS Scientific and VWD Holdings, executed and delivered to Truist a Guaranty Agreement, in which they unconditionally guaranteed the prompt and complete repayment of all sums due and owing to Truist according to the terms of Note 3410-00001 and Note 3410-00003 (the “Guaranty 1”). A true and exact copy of the Guaranty 1 is attached to this Complaint as Exhibit L and made a part hereof

71. Defendants, AgTech Scientific Corp., Clear Sky Enterprises, Emerald Assets, Double Dutch Logistics, Mid-American Trucking, Color Point, AgTech Scientific, EPS Scientific and VWD Holdings, have failed to cure the default of AgTech Scientific Group under Note 3410-00001 and Note 3410-00003. Accordingly, the Defendants, AgTech Scientific Corp., Clear Sky Enterprises, Emerald Assets, Double Dutch Logistics, Mid-American Trucking, Color Point, AgTech Scientific, EPS Scientific and VWD Holdings, are in default under Guaranty 1.

COUNT IX

(Personal Guarantees – Note 3436-00001)

72. Truist restates, re-alleges and reaffirms all averments set forth in numerical paragraphs 1 – 71 above, the same as if set forth herein at length.

73. On or about April 10, 2020, the Defendants, AgTech Scientific Corp., Clear Sky Enterprises, Emerald Assets, Double Dutch Logistics, Mid-American Trucking, Color Point, AgTech Scientific, EPS Scientific and VWD Holdings, executed and delivered to Truist a

Guaranty Agreement, in which they unconditionally guaranteed the prompt and complete repayment of all sums due and owing to Truist according to the terms of Note 3436-00001 (the “Guaranty 2”)¹. A true and exact copy of the Guaranty 2 is attached to this Complaint as Exhibit M and made a part hereof

74. Defendants, AgTech Scientific Corp., Clear Sky Enterprises, Emerald Assets, Double Dutch Logistics, Mid-American Trucking, Color Point, AgTech Scientific, EPS Scientific and VWD Holdings, have failed to cure the default of AgTech Scientific Group under Note 3436-00001. Accordingly, the Defendants, AgTech Scientific Corp., Clear Sky Enterprises, Emerald Assets, Double Dutch Logistics, Mid-American Trucking, Color Point, AgTech Scientific, EPS Scientific and VWD Holdings, are in default under Guaranty 2.

WHEREFORE, the Plaintiff, Truist Bank f/k/a Branch Banking and Trust Company, demands as follows:

1. Truist be awarded an *in personam* judgment on Note 3410-00001 against the Defendants, AgTech Scientific Group, AgTech Scientific Corp., Clear Sky Enterprises, Emerald Assets, Double Dutch Logistics, Mid-American Trucking, Color Point, AgTech Scientific, EPS Scientific and VWD Holdings, jointly and severally, in the amount of \$16,365,577.61, comprised of principal in the amount of \$14,850,866.24, interest in the amount of \$1,412,258.94, late charges in the amount of \$62,273.02 and other fees and costs in the amount of \$40,179.41, plus interest on the principal portion thereof at the fixed rate of 15.00% per annum from June 28, 2021, until paid, plus accrued and accruing attorneys’ fees, court costs and its expenses;

2. Truist be further awarded an *in personam* judgment on Note 3410-00003 against

¹ Guaranty 2, together with the Loan Agreement, Note 3410-00001, Note 3410-00003, Note 3436-00001 Loan Agreement, Note 3436-00001, SWAP Agreement, Color Point Mortgage, Color Point Assignment, Color Point Property Rents, AgTech Mortgage, AgTech Assignment, AgTech Scientific Property Rents, Security Agreement, and Guaranty 1, the “Loan Documents”).

the Defendants, AgTech Scientific Group, AgTech Scientific Corp., Clear Sky Enterprises, Emerald Assets, Double Dutch Logistics, Mid-American Trucking, Color Point, AgTech Scientific, EPS Scientific and VWD Holdings, jointly and severally, in the amount of \$15,792,711.75, comprised of principal in the amount of \$14,345,000.00, interest in the amount of \$1,371,928.78, returned payment fee in the amount of \$150.00 and late charges in the amount of \$75,632.97, plus interest on the principal portion thereof at the fixed rate of 15.00% per annum from June 25, 2021, until paid, plus accrued and accruing attorneys' fees, court costs and its expenses;

3. Trust be further awarded an *in personam* judgment on the Swap Agreement against the Defendant, AgTech Scientific Group, in the approximate balance owing to cancel the Swap Agreement of \$616,434.53, plus interest thereon, plus accrued and accruing attorneys' fees, court costs and its expenses;

4. Trust be further awarded an *in personam* judgment on Note 3436-00001 against the Defendants, AgTech Scientific, Color Point, AgTech Scientific Group, EPS Scientific, AgTech Scientific Corp., VWD Holdings, Clear Sky Enterprises, Emerald Assets, Double Dutch Logistics, and Mid-American Trucking, jointly and severally, in the amount of \$3,268,906.06, comprised of principal in the amount of \$2,949,190.32, interest in the amount of \$276,917.13, late charges in the amount of \$12,924.25, legal fees in the amount of \$26,599.36 and other fees and costs in the amount of \$3,275.00, plus interest on the principal portion thereof at the fixed rate of 15.00% per annum from June 25, 2021, until paid, plus accrued and accruing attorneys' fees, court costs and its expenses;

5. That an Order be entered appointing a receiver for the Color Point Property, AgTech Scientific Property and Collateral;

6. That Truist be further awarded immediate possession of the Collateral to secure repayment of the amounts adjudicated in paragraphs 1 and 2 above; and

7. Judgment for any other legal or equitable relief to which it may appear entitled.

Respectfully Submitted,

DINSMORE & SHOHL LLP

/s/ Martin B. Tucker

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