UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 OR 15(d)
of The Securities Exchange Act of 1934

Date of report (Date of earliest event reported): **November 5, 2024**

AGRIFY CORPORATION
(Exact name of registrant as specified in its charter)

Nevada	**001-39946**	**30-0943453**
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

2468 Industrial Row Dr. Troy, MI	**48084**
(Address of principal executive offices)	(Zip Code)

Registrant's telephone number, including area code: **(617) 896-5243**

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	**Trading Symbol(s)**	**Name of each exchange on which registered**
Common Stock, par value $0.001 per share	AGFY	Nasdaq Capital Market

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company ☒

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Item 1.01 Entry into a Material Definitive Agreement.

Issuance of Convertible Note

On November 5, 2024, Agrify Corporation (the "Company") issued a Secured Convertible Note (the "Note") to RSLGH, LLC (the "Investor"), a subsidiary of Green Thumb Industries Inc. ("Green Thumb").

The Note is a secured obligation of the Company and will rank senior to all indebtedness of the Company except for certain indebtedness set forth in the Note. The Note will mature on November 5, 2025 (the "Maturity Date") and will contain a 10.0% annualized interest rate, with interest to be paid on the first calendar day of each September and March while the Note is outstanding, in cash, beginning January 1, 2025. The principal amount of the Note will be payable on the Maturity Date.

The Note imposes certain customary affirmative and negative covenants upon the Company, including covenants relating to corporate existence, indebtedness, liens, distributions, affiliate transactions, and issuance of other notes. If an event of default under the Note occurs, the Investor can elect to redeem the Note for cash equal to the then-outstanding principal amount of the Note (or such lesser principal amount accelerated by the Investor), plus accrued and unpaid interest, including default interest, which accrues at a rate per annum equal to 14% from the date of a default or event of default, or, only in connection with certain events of default.

If the Investor elects to convert the Note, the conversion price per share will be $3.158, subject to customary adjustments for certain corporate events. The conversion of the Note will be subject to certain customary conditions and the receipt of stockholder approval to the extent necessary under Nasdaq listing rules.

The foregoing summary of the Note does not purport to be complete, and is qualified in its entirety by reference to a copy of the Note that is filed as Exhibit 4.1 hereto.

Item 2.03. Creation of a Direct Financial Obligation.

The information set forth in Item 1.01 of this Current Report on Form 8-K regarding the Note is incorporated herein by reference into this Item 2.03.

Item 3.02. Unregistered Sales of Securities.

The information set forth in Items 1.01 of this Current Report on Form 8-K regarding the issuance of the Note and the shares of common stock issuable upon conversion of the Note is incorporated herein by reference into this Item 3.02.

The Note and the shares of common stock underlying the Note (collectively, the "Securities") were, and will be, offered and sold in transactions exempt from registration under the Securities Act of 1933, as amended (the "Securities Act") in reliance on Section 4(a)(2) thereof and Rule 506(b) of Regulation D thereunder. The Investor is an "accredited investor," as defined in Regulation D, and is acquiring the Securities for investment only and not with a view towards, or for resale in connection with, the public sale or distribution thereof. Accordingly, the Securities will not be registered under the Securities Act and the Securities may not be offered or sold in the United States absent registration or an exemption from registration under the Securities Act and any applicable state securities laws.

Neither this Current Report on Form 8-K nor the exhibits attached hereto is an offer to sell or the solicitation of an offer to buy shares of common stock, notes, or any other securities of the Company.

Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

Resignation of Director and Chief Executive Officer

On November 5, 2024, immediately following the issuance of the Note (the "Effective Time"), Raymond Chang resigned as a member of the Board of Directors (the "Board") of the Company and any subsidiaries and as President and Chief Executive Officer of the Company, and I-Tseng Jenny Chan resigned as a member of the Board. Mr. Chang's and Ms. Chan's resignations did not result from any disagreement regarding the Company's operations, policies or practices.

Appointment of Directors

At the Effective Time, the Board appointed Benjamin Kovler as a member of the Board and Chairman and appointed Armon Vakili and Richard Drexler as members of the Board.

Mr. Kovler, age 46, founded Green Thumb in 2014. He has been Chairman of Green Thumb since 2014 and Chief Executive Officer of Green Thumb from 2014 through year-end 2017 and since August 2018. Mr. Kovler is frequently featured as a cannabis industry thought leader in media outlets such as Bloomberg, Barron's, Business Insider, CNBC and Forbes. He previously served on the boards of directors of Springbig, Inc., a cannabis marketing platform from January 2018 until December 2022, and The Cann + Botl Company, a privately held cannabis-infused beverage company, from December 2020 to December 2022. He is also co-founder of Invest For Kids, a not-for-profit organization that hosts an annual investment ideas conference to benefit underserved young people in Chicago. Founded in 2009, Invest For Kids has raised nearly $18 million, 100% of which has supported over 75 organizations dedicated to improving the lives of Chicago's youth. Mr. Kovler brings his extensive experience managing complex operating companies and deep commitment to philanthropy. He earned a Bachelor of Arts in philosophy, politics and economics from Pomona College and a Master of Business Administration in accounting and finance from The University of Chicago.

Mr. Vakili, age 33, has served as Vice President of Mergers, Acquisitions, and Partnerships at Green Thumb since 2017 and is involved in all external investments and strategic developments. Prior to joining Green Thumb, Mr. Vakili was part of the M&A/advisory teams at Stericycle Inc. and KPMG US LLP. Mr. Vakili earned his Bachelor of Arts at Indiana University.

Mr. Drexler, age 77, served, from March 2016 to March 2023, as Chairman of the Audit and Finance Committee at Bison Gear and Engineering, a global supplier of power transmission equipment. From October 2022 to December 2023, he served on the board of directors of Green Thumb and as chair of its audit committee. He also previously served a director of Jura Holdings Corp., a company formed to manage the remaining assets of Bison Gear and Engineering. Mr. Drexler served as Chief Executive Officer and Chairman of the Board at Quality Products, a manufacturer and distributor of products for aircraft ground support equipment for the military and hydraulic machine tool markets, from January 2002 to October 2014, and remained as its Chairman until March 2017. During his leadership at Quality Products, Mr. Drexler orchestrated strategic changes that pulled the company out of debt and resulted in significant positive cash flow and EBITDA. Mr. Drexler also served as Chairman, CEO, and President of Allied Products Corporation until 2002. During his leadership of Allied Products, Mr. Drexler was responsible for the overall strategy, planning, policy, direction, and focus of the company. Mr. Drexler graduated from Northwestern University with a Bachelor of Arts in Business.

Other than pursuant to the agreement pursuant to which the Securities Acquisition (as defined below) was consummated, to which the Company was not a party, there are no arrangements or understandings between Mr. Kovler, Mr. Vakili or Mr. Drexler and any other person pursuant to which they were appointed as directors of the Company, and there are no family relationships between Mr. Kovler, Mr. Vakili or Mr. Drexler and any director or executive officer of the Company. Since the beginning of the Company's last fiscal year, except for the issuance of the Note as described in Item 1.01 above, the Company has not engaged in any transactions, and there are no proposed transactions, or series of similar transactions, in which Mr. Kovler, Mr. Vakili or Mr. Drexler was or is to be a participant and in which any related person had a direct or indirect material interest in which the amount involved exceeds or exceeded $120,000.

Appointment of Chief Executive Officer

Effective as of the Effective Time, the Company appointed Benjamin Kovler as its Interim Chief Executive Officer. In this capacity, Mr. Kovler will also serve as principal executive, financial and accounting officer. He will also carry the titles of President, Secretary and Treasurer.

Severance Agreement

On November 5, 2024, in connection with Mr. Chang's resignation as Chairman and Chief Executive Officer, the Company entered into a Severance Agreement with Mr. Chang (the "Severance Agreement"). Pursuant to the Severance Agreement, Mr. Chang will be entitled to severance payments with an aggregate amount of $1.0 million payable through February 1, 2027. Mr. Chang will also be entitled to COBRA reimbursement payments through February 1, 2027 or through the last date in which he is eligible for COBRA. The Severance Agreement includes a customary release of claims by Mr. Chang in favor of the Company.

The foregoing summary of the Severance Agreement does not purport to be complete, and is qualified in its entirety by reference to a copy of the Severance Agreement that is filed as Exhibit 10.1 hereto.

Item 7.01. Regulation FD Disclosure.

On November 5, 2024, the Company issued a press release announcing the issuance of the Note, the acquisition by the Investor of certain securities formerly held by entities affiliated with Mr. Chang and Ms. Chan (the "Securities Acquisition"), and the appointment of Messrs. Kovler, Vakili and Drexler as directors and of Mr. Kovler as interim Chief Executive Officer, a copy of which is attached as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated herein by reference.

The information set forth in Item 7.01 of this Report, including Exhibit 99.1 attached hereto, shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or otherwise subject to the liabilities of such section. The information set forth in Item 7.01 of this Report, including Exhibit 99.1 attached hereto, shall not be incorporated by reference into any filing under the Securities Act of 1933, as amended, or the Exchange Act, except as may be expressly set forth by specific reference in such filing.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

Exhibit Number	**Title**
4.1	Secured Amended, Restated and Consolidated Convertible Note
10.1	Severance Agreement, dated November 5, 2024, between Agrify Corporation and Raymond Chang
99.1	Press Release of Agrify Corporation dated November 5, 2024
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

AGRIFY CORPORATION

Date: November 5, 2024

By: /s/ Benjamin Kovler
Benjamin Kovler
Chairman and Interim Chief Executive Officer

Exhibit 4.1

AGRIFY CORPORATION

Secured Convertible Note due 2026

THE ISSUANCE AND SALE OF NEITHER THE SECURITIES REPRESENTED BY THIS CERTIFICATE NOR THE SECURITIES THAT MAY BE ISSUABLE PURSUANT TO THIS NOTE HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR APPLICABLE STATE SECURITIES LAWS. UNTIL THE DATE THAT IS SIX (6) MONTHS AFTER NOVEMBER 5, 2024, THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION AND PROSPECTUS-DELIVERY REQUIREMENTS OF THE SECURITIES ACT.

AGRIFY CORPORATION

Secured Convertible Note due 2026

Certificate No. D-1

Agrify Corporation, a Nevada corporation (the "**Company**"), for value received, promises to pay to RSLGH, LLC, a Delaware limited liability company ("**Lender**"), or its registered assigns, the principal sum of up to Twenty Million Dollars ($20,000,000), or, if less, the aggregate unpaid principal amount of all Advances made by the Holder to the Company (such principal sum, the "**Principal Amount**") on November 5, 2025, and to pay any outstanding interest thereon, as provided in this Note, in each case as provided in and subject to the other provisions of this Note, including the earlier redemption, repurchase or conversion of this Note.

Additional provisions of this Note are set forth on the other side of this Note.

[*The Remainder of This Page Intentionally Left Blank; Signature Page Follows*]

IN WITNESS WHEREOF, Agrify Corporation has caused this instrument to be duly executed as of the date set forth below.

AGRIFY CORPORATION

Date: November 5, 2024

By: /s/ Raymond Chang
Name: Raymond Chang
Title: Chairman and Chief Executive Officer

(Signature Page to Secured
Convertible Note due 2026, Certificate No. D-1)

AGRIFY CORPORATION

Secured Convertible Note due 2026

This Note (this "**Note**" and, collectively with any Note issued in exchange therefor or in substitution thereof, the "**Notes**") is issued by Agrify Corporation, a Nevada corporation (the "**Company**"), and designated as its "Secured Convertible Notes due 2026."

This Note evidences advances made by the Holder in its sole discretion to the Company ("**Advances**") pursuant to the terms herein.

Section 1. DEFINITIONS.

"**Advances**" has the meaning set forth in the introductory paragraphs hereto.

"**Affiliate**" has the meaning set forth in Rule 144 under the Securities Act.

"**Attribution Parties**" means, collectively, the following Persons and entities: (i) any investment vehicle, including, any funds, feeder funds or managed accounts, currently, or from time to time after the Issue Date, directly or indirectly managed or advised by the Holder's investment manager or any of its Affiliates or principals, (ii) any direct or indirect Affiliates of the Holder or any of the foregoing, (iii) any Person acting or who could be deemed to be acting as a "group" (within the meaning of Section 13(d)(3) of the Exchange Act) together with the Holder or any of the foregoing and (iv) any other Persons whose beneficial ownership of the Common Stock would or could be aggregated with the Holder's and the other Attribution Parties for purposes of Section 13(d) of the Exchange Act.

"**Authorized Denomination**" means, with respect to the Notes, a Principal Amount thereof equal to $1,000 or any integral multiple of $1,000 in excess thereof, or, if such Principal Amount then-outstanding is less than $1,000, then such outstanding Principal Amount.

"**Bankruptcy Law**" means Title 11, United States Code, or any similar U.S. federal or state or non-U.S. law for the relief of debtors.

"**Board of Directors**" means the board of directors of the Company or a committee of such board duly authorized to act on behalf of such board.

"**Business Combination Event**" has the meaning set forth in **Section 10**.

"**Business Day**" means any day other than a Saturday, a Sunday or any day on which commercial banks in The City of New York are authorized or required by law or executive order to close or be closed; *provided*, *however*, for clarification, commercial banks in The City of New York shall not be deemed to be authorized or required by law or executive order to close or be closed due to "stay at home", "shelter-in-place", "non-essential employee" or any other similar orders or restrictions or the closure of any physical branch locations at the direction of any governmental authority so long as the electronic funds transfer systems (including for wire transfers) of commercial banks in The City of New York are open for use by customers on such day.

"**Capital Lease**" means, with respect to any Person, any leasing or similar arrangement conveying the right to use any property, whether real or personal property, or a combination thereof, by that Person as lessee that, in conformity with GAAP, is required to be accounted for as a capital lease on the balance sheet of such Person.

"**Capital Lease Obligation**" means, at the time any determination is to be made, the amount of the liability in respect of a Capital Lease that would at that time be required to be capitalized on a balance sheet prepared in accordance with GAAP, and the stated maturity thereof shall be the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be prepaid by the lessee without payment of a penalty.

"**Capital Stock**" of any Person means any and all shares of, interests in, rights to purchase, warrants or options for, participations in, or other equivalents of, in each case however designated, the equity of such Person, but excluding any debt securities convertible into such equity.

"**Cash**" means all cash and liquid funds.

"**Cash Equivalents**" means, as of any date of determination, any of the following: (A) marketable securities (i) issued or directly and unconditionally guaranteed as to interest and principal by the United States Government, or (ii) issued by any agency of the United States the obligations of which are backed by the full faith and credit of the United States, in each case maturing within one (1) year after such date; (B) marketable direct obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof, in each case maturing within one (1) year after such date and having, at the time of the acquisition thereof, a rating of at least A-1 from Standard & Poor's Corporation or at least P-1 from Moody's Investors Service; (C) commercial paper maturing no more than one (1) year from the date of creation thereof and having, at the time of the acquisition thereof, a rating of at least A-1 from Standard & Poor's Corporation or at least P-1 from Moody's Investors Service; (D) certificates of deposit or bankers' acceptances maturing within one (1) year after such date and issued or accepted by any commercial bank organized under the laws of the United States of America or any State, or the District of Columbia that (i) is at least "adequately capitalized" (as defined in the regulations of its primary federal banking regulator), and (ii) has Tier 1 capital (as defined in such regulations) of not less than $5,000,000,000; and (E) shares of any money market mutual fund that (i) has substantially all of its assets invested continuously in the types of investments referred to in clauses (A) and (B) above, (ii) has net assets of not less than $5,000,000,000, and (iii) has the highest rating obtainable from either Standard & Poor's Corporation or Moody's Investors Service.

"**Close of Business**" means 5:00 p.m., New York City time.

"**Collateral**" has the meaning set forth in the Security Agreement.

"**Commission**" means the U.S. Securities and Exchange Commission.

"**Common Stock**" means the common stock, par value $0.001 per share, of the Company.

"**Common Stock Change Event**" has the meaning set forth in **Section 7(H)(i)(4)**.

"**Compliance Certification**" means each certification delivered pursuant to **Section 9(G)** or **Section 9(K)(ii)**.

"**Contingent Obligation**" means, as applied to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to (A) any Indebtedness or other obligations of another Person, including any such obligation directly or indirectly guaranteed, endorsed, co-made or discounted or sold with recourse by that Person, or in respect of which that Person is otherwise directly or indirectly liable; (B) any obligations with respect to undrawn letters of credit, corporate credit cards or merchant services issued for the account of that Person; and (C) all obligations arising under any interest rate, currency or commodity swap agreement, interest rate cap agreement, interest rate collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates or commodity prices; provided, however, that the term "Contingent Obligation" shall not include endorsements for collection or deposit in the ordinary course of business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determined amount of the primary obligation in respect of which such Contingent Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by such Person in good faith; provided, however, that such amount shall not in any event exceed the maximum amount of the obligations under the guarantee or other support arrangement.

"**Conversion Amount**" has the meaning set forth in **Section 7(d)(i)**.

"**Conversion Consideration**" has the meaning set forth in **Section 7(D)(i)**.

"**Conversion Date**" means the first Business Day on which the requirements set forth in **Section 7(C)(i)** to convert this Note are satisfied.

"**Conversion Price**" means an amount equal to $3.158 per share of Common Stock; provided, however, that if after the date of the amendment and restatement of this Note the Company effects any stock split, reverse stock split, share combination or similar transaction, the Conversion Price shall be equitably adjusted to reflect the ratio of such split or similar transaction.

"**Conversion Settlement Date**" has the meaning set forth in **Section 7(D)(iii)**.

"**Covering Price**" has the meaning set forth in **Section 7(D)(iv)(1)**.

"**Daily VWAP**" means, for any VWAP Trading Day, the per share volume-weighted average price of the Common Stock as displayed under the heading "Bloomberg VWAP" on Bloomberg page "AGFY <EQUITY> VAP" (or, if such page is not available, its equivalent successor page) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such VWAP Trading Day (or, if such volume-weighted average price is unavailable, the market value of one share of Common Stock on such VWAP Trading Day, determined, using a volume-weighted average price method, by a nationally recognized independent investment banking firm selected by the Company). The Daily VWAP will be determined without regard to after-hours trading or any other trading outside of the regular trading session.

"**Default**" means any event that is (or, after notice, passage of time or both, would be) an Event of Default.

"**Default Interest**" has the meaning set forth in **Section 4(B)(ii)**.

"**Disqualified Stock**" means, with respect to any Person, any Capital Stock that by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable at the option of the holder) or upon the happening of any event:

(A) matures or is mandatorily redeemable pursuant to a sinking fund obligation or otherwise;

(B) is convertible or exchangeable for Indebtedness or Disqualified Stock (excluding Capital Stock convertible or exchangeable solely at the option of the Company or a Subsidiary of the Company; provided that any such conversion or exchange will be deemed an incurrence of Indebtedness or Disqualified Stock, as applicable); or

(C) is redeemable at the option of the holder thereof, in whole or in part,

(D) in the case of each of clauses (A), (B) and (C), at any point prior to the one hundred eighty-first (181st) day after the Maturity Date.

"**Eligible Exchange**" means any of The New York Stock Exchange, The NYSE American LLC, The Nasdaq Capital Market, The Nasdaq Global Market or The Nasdaq Global Select Market (or any of their respective successors).

"**Equipment**" means all "**equipment**" as defined in the UCC with such additions to such term as may hereafter be made, and includes without limitation all machinery, fixtures, goods, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing.

"**Equity Interests**" shall mean, with respect to any Person, any and all shares, interests, participations or other equivalents, including preferred stock or membership interests (however designated, whether voting or non-voting), of equity of such Person, including, if such Person is a partnership, partnership interests (whether general or limited) and including, without limitation, any "equity security" (as that term is defined under Rule 405 promulgated under the Securities Act), and any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, such partnership.

"**Equity Rights**" shall mean, with respect to any Person, any then-outstanding subscriptions, options, warrants, commitments, preemptive rights, convertible debt, or other equity-linked securities or agreements of any kind for the issuance or sale, of any additional Equity Interests of any class, or partnership or other ownership interests of any type in, such Person.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

"**Event of Default**" has the meaning set forth in **Section 11(A)**.

"**Event of Default Acceleration Amount**" means, with respect to the delivery of a notice pursuant to **Section 11(B)(ii)** declaring this Note to be due and payable immediately on account of an Event of Default, a cash amount equal to one hundred percent (100%) of the then outstanding Principal Amount of this Note (or such lesser principal amount accelerated pursuant to such notice) plus accrued and unpaid interest on this Note.

"**Event of Default Notice**" has the meaning set forth in **Section 11(C)**.

"**Ex-Dividend Date**" means, with respect to an issuance, dividend or distribution on the Common Stock, the first date on which shares of Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive such issuance, dividend or distribution (including pursuant to due bills or similar arrangements required by the relevant stock exchange). For the avoidance of doubt, any alternative trading convention on the applicable exchange or market in respect of the Common Stock under a separate ticker symbol or CUSIP number will not be considered "regular way" for this purpose.

"**Excess Shares**" has the meaning set forth in **Section 7(I)**.

"**Exchange Act**" means the U.S. Securities Exchange Act of 1934, as amended.

"**Existing Notes**" means the Company's Senior Secured Amended, Restated and Consolidated Convertible Note due 2025, as amended, and the Company's Junior Secured Convertible Promissory Note July 1, 2025, as amended

"**Expiration Date**" has the meaning set forth in **Section 7(F)(i)(5)**.

"**Expiration Time**" has the meaning set forth in **Section 7(F)(i)(5)**.

"**Fiscal Quarter**" means each three month period ending March 31, June 30, September 30, and December 31.

"**GAAP**" means generally accepted accounting principles in the United States of America, as in effect from time to time; provided the definitions set forth in this Note and any financial calculations required by thereby shall be computed to exclude any change to lease accounting rules from those in effect pursuant to Financial Accounting Standards Board Accounting Standards Codification 840 (Leases) and other related lease accounting guidance as in effect on the date hereof.

"**Holder**" means the person in whose name this Note is registered on the books of the Company, which initially is the Initial Holder.

"**Holder Conversion Notice**" has the meaning set forth in **Section 7(C)(i)**.

The term "**including**" means "including without limitation," unless the context provides otherwise.

"**Indebtedness**" means, indebtedness of any kind, including, without duplication (A) all indebtedness for borrowed money or the deferred purchase price of property or services, including reimbursement and other obligations with respect to surety bonds and letters of credit, (B) all obligations evidenced by notes, bonds, debentures or similar instruments, (C) all Capital Lease Obligations, (D) all Contingent Obligations, and (E) Disqualified Stock.

"**Independent Investigator**" has the meaning set forth in **Section 9(S)**.

"**Initial Holder**" has the meaning set forth in the cover page of this Note.

"**Interest Payment Date**" means (A) the first calendar day of each September and March during the term of this Note, beginning on January 1, 2025; and (B) if not otherwise included in clause (A), the Maturity Date.

"**Investment**" means any beneficial ownership (including stock, partnership or limited liability company interests) of or in any Person, or any loan, advance or capital contribution to any Person or the acquisition of all, or substantially all, of the assets of another Person or the purchase of any assets of another Person for greater than the fair market value of such assets to solely the extent of the amount in excess of the fair market value.

"**Issue Date**" means November 5, 2024.

"**Last Reported Sale Price**" of the shares of Common Stock for any Trading Day means the closing sale price per share (or, if no closing sale price is reported, the average of the last bid price and the last ask price per share or, if more than one in either case, the average of the average last bid prices and the average last ask prices per share) of Common Stock on such Trading Day as reported in composite transactions for the principal U.S. national or regional securities exchange on which the shares of Common Stock are then listed. If the Common Stock is not listed on a U.S. national or regional securities exchange on such Trading Day, then the Last Reported Sale Price will be the last quoted bid price per share of Common Stock on such Trading Day in the over-the-counter market as reported by OTC Markets Group Inc. or a similar organization. If the Common Stock is not so quoted on such Trading Day, then the Last Reported Sale Price will be the average of the mid-point of the last bid price and the last ask price per share of Common Stock on such Trading Day from a nationally recognized independent investment banking firm selected by the Company.

"**Lien**" means any mortgage, deed of trust, pledge, hypothecation, assignment for security, security interest, encumbrance, levy, lien or charge of any kind, whether voluntarily incurred or arising by operation of law or otherwise, against any property, any conditional sale or other title retention agreement, and any lease in the nature of a security interest; provided, that for the avoidance of doubt, licenses, strain escrows and similar provisions in collaboration agreements, research and development agreements that do not create or purport to create a security interest, encumbrance, levy, lien or charge of any kind shall not be deemed to be Liens for purposes of this Note.

"**Mack Agreement**" means the Modification and Settlement Agreement between the Company and Mack Molding Company dated October 18, 2023 and the first amendment thereto dated August 30, 2024.

"**Market Disruption Event**" means, with respect to any date, the occurrence or existence, during the one-half hour period ending at the scheduled close of trading on such date on the principal U.S. national or regional securities exchange or other market on which the Common Stock is listed for trading or trades, of any material suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant exchange or otherwise) in the Common Stock or in any options contracts or futures contracts relating to the Common Stock.

"**Maturity Date**" means November 5, 2025.

The term "**or**" is not exclusive, unless the context expressly provides otherwise.

"**Open of Business**" means 9:00 a.m., New York City time.

"**Other Holder**" means any person in whose name any Other Note is registered on the books of the Company.

"**Permitted Indebtedness**" means (A) Indebtedness evidenced by the Existing Notes; (B) Indebtedness disclosed in the Company's public filings with the Securities and Exchange Commission through the date of this Note, including Indebtedness incurred pursuant to the Mack Agreement; (C) nonrecourse Indebtedness outstanding at any time secured by a Lien described in clause (G) of the defined term "Permitted Liens," provided such Indebtedness does not exceed the cost of the Equipment or real property interests and related expenses financed with such Indebtedness or in the form of purchase money Indebtedness (whether in the form of a loan or a lease) used solely to acquire Equipment or real property interests used in the ordinary course of business and secured only by such Equipment and real property interests and sale and insurance proceeds in respect thereof, and provided further that the total amount of Permitted Indebtedness permitted pursuant to this clause (C) may not exceed five million dollars ($5,000,000) in the aggregate; (D) nonrecourse Indebtedness outstanding at any time secured by a Lien described in clause (H) of the defined term "Permitted Liens," provided such Indebtedness does not exceed the cost of the software or other intellectual property and related expenses financed with such Indebtedness or in the form of purchase money Indebtedness (whether in the form of a loan or a lease) used solely to acquire software or other intellectual property used in the ordinary course of business and secured only by such software or other intellectual property and sale and insurance proceeds in respect thereof, provided further that the total amount of Permitted Indebtedness permitted pursuant to this clause (D) may not exceed five hundred thousand dollars ($500,000) in the aggregate; (E) Indebtedness to trade creditors incurred in the ordinary course of business; (F) Subordinated Indebtedness of the Company that has received the prior written approval of the Holder; (G) reimbursement obligations in connection with letters of credit or similar instruments that are secured by Cash or Cash Equivalents and issued on behalf of the Company or a Subsidiary thereof in an aggregate amount not to exceed five hundred thousand dollars ($500,000) at any time outstanding; (H) unsecured Indebtedness of the Company that has received the prior written approval of the Holder, (I) Contingent Obligations that are guarantees of Indebtedness described in clauses (A) through (H) and (J); and (J) earn-outs incurred in connection with any acquisition transaction that are subordinated in full to the Notes to the satisfaction of the Holder and do not exceed (a) ten million dollars ($10,000,000) in the aggregate due in any twelve-month period and (b) twenty million dollars ($20,000,000); provided that in no event shall Permitted Indebtedness under (x) clauses (B)-(J) of this definition exceed in the aggregate an amount equal to ten million dollars ($10,000,000) or (y) clauses (F) or (H) (1) have a final maturity date, amortization payment, sinking fund, put right, mandatory redemption or other repurchase obligation at the option of the lender or holder of such indebtedness, or be prepayable at the option of the Company, in any case earlier than one hundred eighty-one (181) days following the Maturity Date or (2) have any covenants that are more restrictive on the Company in any material respect than the covenants set forth in this Note.

"**Permitted Intellectual Property Licenses**" means (A) intellectual property licenses in existence as of November 5, 2024, and (B) non-perpetual licenses granted in the ordinary course of business on arm's length terms consisting of the licensing of technology, the development of technology or the providing of technical support which may include licenses with unlimited renewal options solely to the extent such options require mutual consent for renewal or are subject to financial or other conditions as to the ability of licensee to perform under the license; provided such license was not entered into during an Event of Default or continuance of a Default.

"**Permitted Liens**" means any and all of the following: (A) Liens in favor of Holder; (B) Liens pursuant to the Mack Agreement and Liens pursuant to the Existing Notes; (C) Liens for taxes, fees, assessments or other governmental charges or levies, either not delinquent or being contested in good faith by appropriate proceedings; provided, that the Company maintains adequate reserves therefor in accordance with GAAP; (D) Liens securing claims or demands of materialmen, artisans, mechanics, carriers, warehousemen, landlords and other like Persons arising in the ordinary course of business; provided, that the payment thereof is not yet required; (E) Liens arising from judgments, decrees or attachments in circumstances which do not constitute a Default or an Event of Default hereunder; (F) the following deposits, to the extent made in the ordinary course of business: deposits under workers' compensation, unemployment insurance, social security and other similar laws, or to secure the performance of bids, tenders or contracts (other than for the repayment of borrowed money) or to secure indemnity, performance or other similar bonds for the performance of bids, tenders or contracts (other than for the repayment of borrowed money) or to secure statutory obligations (other than Liens arising under ERISA or environmental Liens) or surety or appeal bonds, or to secure indemnity, performance or other similar bonds; (G) Liens on Equipment (but, for the avoidance of doubt, not software or other intellectual property) or real property interests constituting purchase money Liens or Liens securing construction financing for real property interests and Liens in connection with Capital Leases securing Indebtedness permitted in clause (C) of "Permitted Indebtedness"; (H) Liens on software or other intellectual property (but, for the avoidance of doubt, not Equipment or real property interests related thereto) constituting purchase money Liens and Liens in connection with Capital Leases securing Indebtedness permitted in clause (D) of "Permitted Indebtedness"; (I) leasehold interests in leases or subleases and licenses granted in the ordinary course of the Company's business and not interfering in any material respect with the business of the licensor; (J) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of custom duties that are promptly paid on or before the date they become due; (K) Liens on insurance proceeds securing the payment of financed insurance premiums that are promptly paid on or before the date they become due (provided that such Liens extend only to such insurance proceeds and not to any other property or assets); (L) statutory and common law rights of set-off and other similar rights as to deposits of cash and securities in favor of banks, other depository institutions and brokerage firms; (M) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business so long as they do not materially impair the value or marketability of the related property; (N) Liens on Cash or Cash Equivalents securing obligations permitted under clause (E) and (G) of the definition of Permitted Indebtedness; (O) Liens securing Subordinated Indebtedness, and (P) Liens incurred in connection with the extension, renewal or refinancing of the Indebtedness secured by Liens of the type described in clauses (C) through (O) above (other than any Indebtedness repaid with the proceeds of this Note); provided, that any extension, renewal or replacement Lien shall be limited to the property encumbered by the existing Lien and the principal amount of the Indebtedness being extended, renewed or refinanced (as may have been reduced by any payment thereon) does not increase.

"**Permitted Transfers**" means (A) dispositions of inventory sold, and Permitted Intellectual Property Licenses entered into, in each case, in the ordinary course of business, (B) dispositions of worn-out, obsolete or surplus property at fair market value in the ordinary course of business; (C) dispositions of accounts or payment intangibles (each as defined in the UCC) resulting from the compromise or settlement thereof in the ordinary course of business for less than the full amount thereof; (D) transfers consisting of Permitted Investments in Wholly Owned Subsidiaries under clause (G) of Permitted Investments; (E) [*RESERVED*]; and (F) other transfers of assets to any Person other than to a joint venture and which have a fair market value of not more than fifty thousand dollars ($50,000) in the aggregate in any twelve (12) month period.

"**Permitted Turnkey Investment**" shall mean any Investments in any customers using the Company's Total Turnkey Solution not to exceed in the aggregate twelve million dollars ($12,000,000).

"**Person**" or "**person**" means any individual, sole proprietorship, partnership, limited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

"**Principal Amount**" has the meaning set forth in the cover page of this Note; *provided*, *however*, that the Principal Amount of this Note will be subject to reduction pursuant to **Section 7**.

"**Reference Property**" has the meaning set forth in **Section 7(H)(i)(4)**.

"**Reference Property Unit**" has the meaning set forth in **Section 7(H)(i)(4)**.

"**Reported Outstanding Share Number**" has the meaning set forth in **Section 7(I)**.

"**Required Reserve Amount**" has the meaning in **Section 9(W)**.

"**Rule 144**" means Rule 144 promulgated under the Securities Act.

"**Scheduled Trading Day**" means any day that is scheduled to be a Trading Day on the principal U.S. national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, on the principal, in terms of volume, Eligible Exchange on which the Common Stock is listed for trading. If the Common Stock is not so listed or traded, then "Scheduled Trading day" means a Business Day.

"**Securities Act**" means the U.S. Securities Act of 1933, as amended.

"**Security Agreement**" means that certain Security Agreement, dated November 5, 2024, between the Company and the Holder, as amended, supplemented or otherwise modified from time to time.

"**Significant Subsidiary**" means, with respect to any Person, any Subsidiary of such Person that constitutes a "significant subsidiary" (as defined in Rule 1-02(w) of Regulation S-X under the Exchange Act) of such Person.

"**Spin-Off**" has the meaning set forth in **Section 7(F)(i)(3)(b)**.

"**Spin-Off Valuation Period**" has the meaning set forth in **Section 7(F)(i)(3)(b)**.

"**Stated Interest**" has the meaning set forth in **Section 4(B)(i)**.

"**Stated Interest Rate**" means, as of any date, a rate per annum equal to ten percent (10.0%).

"**Subordinated Indebtedness**" means Indebtedness subordinated to the Notes that is (a) in amounts and on terms and conditions satisfactory to the Holder in its sole discretion, or (b) nonrecourse Indebtedness incurred in connection with the consummation of a TTK Contract that is secured only by assets of the respective TTK SPV, provided that, for the avoidance of doubt, no Indebtedness permitted under this clause (b) shall be guaranteed by the Company or qualify as a liability of the Company.

"**Subsidiary**" means, with respect to any Person, (A) any corporation, association or other business entity (other than a partnership or limited liability company) of which more than fifty percent (50%) of the total voting power of the Capital Stock entitled (without regard to the occurrence of any contingency, but after giving effect to any voting agreement or stockholders' agreement that effectively transfers voting power) to vote in the election of directors, managers or trustees, as applicable, of such corporation, association or other business entity is owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of such Person; and (B) any partnership or limited liability company where (i) more than fifty percent (50%) of the capital accounts, distribution rights, equity and voting interests, or of the general and limited partnership interests, as applicable, of such partnership or limited liability company are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of such Person, whether in the form of membership, general, special or limited partnership or limited liability company interests or otherwise; and (ii) such Person or any one or more of the other Subsidiaries of such Person is a controlling general partner of, or otherwise controls, such partnership or limited liability company.

"**Successor Corporation**" has the meaning set forth in **Section 10(A)**.

"**Successor Person**" has the meaning set forth in **Section 7(H)(i)**.

"**Trading Day**" means any day on which (A) trading in the Common Stock generally occurs on the principal U.S. national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock is then traded; and (B) there is no Market Disruption Event. If the Common Stock is not so listed or traded, then "Trading Day" means a Business Day.

"**TTK Contracts**" means Total Turn-Key Solution contracts entered into between the Company and customers thereof to implement a TTK Transaction, which include, without limitation, financing, construction, vertical farming unit leasing, extraction or processing equipment leasing, software, brand and/or marketing consulting and production-based fee contracts.

"**TTK SPV**" means a special purpose vehicle established to implement a TTK Transaction with a customer of the Company.

"**TTK Transaction**" means a long-term partnership between the Company and a customer of the Company designed to provide such customer with access to vertical farming units, extraction or processing equipment, construction and/or equipment funding, facility design and construction services, cultivation equipment and software, standard operating procedures, training, data and insights, and ongoing maintenance, support, and equipment upgrades.

"**UCC**" means the Uniform Commercial Code as the same is, from time to time, in effect in the State of New York.

"**Undelivered Shares**" has the meaning set forth in **Section 7(D)(iv)**.

"**VWAP Market Disruption Event**" means, with respect to any date, (A) the failure by the principal U.S. national or regional securities exchange on which the Common Stock is then listed, or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, the principal other market on which the Common Stock is then traded, to open for trading during its regular trading session on such date; or (B) the occurrence or existence, for more than one half hour period in the aggregate, of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant exchange or otherwise) in the Common Stock or in any options contracts or futures contracts relating to the Common Stock, and such suspension or limitation occurs or exists at any time before 1:00 p.m., New York City time, on such date.

"**VWAP Trading Day**" means a day on which (A) there is no VWAP Market Disruption Event; provided that the Holder, by written notice to the Company, may waive any such VWAP Market Disruption Event; and (B) trading in the Common Stock generally occurs on the principal U.S. national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock is then traded. If the Common Stock is not so listed or traded, then "VWAP Trading Day" means a Business Day.

"**Wholly Owned Subsidiary**" of a Person means any Subsidiary of such Person all of the outstanding Capital Stock or other ownership interests of which (other than directors' qualifying shares) are owned by such Person or one or more Wholly Owned Subsidiaries of such Person.

Section 2. Persons Deemed Owners.

The Holder of this Note will be treated as the owner of this Note for all purposes.

Section 3. Registered Form.

This Note, and any Note issued in exchange therefor or in substitution thereof, will be in registered form, without coupons.

Section 4. Advances; Interest; Maturity Date Payment; Prepayment.

(A) *Advances*.

(i) Holder shall, at its sole discretion, make Advances under this Note as requested by the Company, in writing. Each request by the Company of an Advance shall be (i) in writing, (ii) include the bank account information into which Holder shall deposit any Advance, (iii) be in increments of $100,000.00.

(B) *Interest*.

(i) This Note will accrue interest (the "**Stated Interest**") at a rate per annum equal to the Stated Interest Rate. Stated Interest on this Note will (i) accrue on the Principal Amount of this Note; (ii) accrue from, and including, the most recent date to which Stated Interest has been paid or duly provided for (or, if no Stated Interest has theretofore been paid or duly provided for, the Issue Date) to, but excluding, the date of payment of such Stated Interest; (iii) be paid to Holder on each Interest Payment Date in accordance with **Section 5(A)**; and (iv) be computed on the basis of a 360-day year comprised of twelve 30-day months.

(ii) If a Default or an Event of Default occurs, then in each case, to the extent lawful, interest ("**Default Interest**") will accrue (rather than at the Stated Interest Rate, if applicable) on the Principal Amount outstanding as of the date of such Default or Event of Default at a rate per annum equal to the Stated Interest Rate plus four percent (4.0%), from, and including, the date of such Default or Event of Default, as applicable, to, but excluding, the date such Default is cured and all outstanding Default Interest under this Note has been paid. Default Interest hereunder will be payable in arrears on the earlier of (i) the first day of each calendar month and (ii) the date such Default is cured, and will be computed on the basis of a 360-day year comprised of twelve 30-day months.

(C) *Maturity Date Payment*. On the Maturity Date, the Company will pay the Holder an amount in cash equal to the then-outstanding Principal Amount of this Note plus any accrued and unpaid interest on this Note.

(D) *Prepayment*. The Company may not prepay the Note.

Section 5. Method of Payment; When Payment Date is Not a Business Day.

(A) *Method of Payment*. The Company will pay all cash amounts due under this Note by wire transfer of immediately available funds to an account of the Holder that is provided to the Company on the date hereof, which account may be changed for any cash amount due under this Note by written notice provided by the Holder to the Company at least three (3) Business Days before the date such amount is due.

(B) *Delay of Payment when Payment Date is Not a Business Day*. If the due date for a payment on this Note as provided in this Note is not a Business Day, then, notwithstanding anything to the contrary in this Note, such payment may be made on the immediately following Business Day and no interest will accrue on such payment as a result of the related delay.

Section 6. [Reserved].

Section 7. Conversion.

(A) *Right to Convert*.

(i) *Conversions in Part*. Subject to the terms of this **Section 7**, this Note may be converted in part, but only in an Authorized Denomination. Provisions of this **Section 7** applying to the conversion of this Note in whole will equally apply to conversions of any permitted portion of this Note.

(B) *When this Note May Be Converted*.

(i) *Generally*. The Holder may convert this Note at any time until the Close of Business on the second (2nd) Scheduled Trading Day immediately before the Maturity Date.

(C) *Conversion Procedures*.

(i) *Generally*. To convert this Note, the Holder must complete, sign and deliver to the Company the conversion notice attached to this Note on **Exhibit A** or portable document format (.pdf) version of such conversion notice (at which time such conversion will become irrevocable) (a "**Holder Conversion Notice**"). For the avoidance of doubt, the Holder Conversion Notice may be delivered by e-mail in accordance with **Section 14**. If the Company fails to deliver, by the related Conversion Settlement Date, any shares of Common Stock forming part of the Conversion Consideration of the conversion of this Note, the Holder, by notice to the Company, may rescind all or any portion of the corresponding Holder Conversion Notice at any time until such Undelivered Shares are delivered.

(ii) *Holder of Record of Conversion Shares*. The person in whose name any shares of Common Stock is issuable upon conversion of this Note will be deemed to become the holder of record of such shares as of the Close of Business on the Conversion Date for such conversion, conferring, as of such time, upon such person, without limitation, all voting and other rights appurtenant to such shares.

(iii) *Taxes and Duties*. If the Holder converts a Note, the Company will pay any documentary, stamp or similar issue or transfer tax or duty due on the issue of any shares of Common Stock upon such conversion.

(D) *Settlement upon Conversion*.

(i) *Generally*. Subject to **Section 7(D)(ii)**, the consideration (the "**Conversion Consideration**") due in respect of any portion of the outstanding Principal Amount of this Note, to be converted (the "**Conversion Amount**") will consist of the following:

(1) subject to **Section 7(D)(ii)**, a number of shares of Common Stock determined by dividing the Conversion Amount by the Conversion Price; and

(2) cash in an amount equal to the aggregate accrued and unpaid interest on this Note to, but excluding, the Conversion Settlement Date for such conversion or, at the election of the Company, a number of validly issued, fully paid and Common Stock (the "**Conversion Consideration Interest Shares**") equal to the quotient (rounded up to the closest whole number) obtained by dividing the aggregate accrued and unpaid interest on this Note to, but excluding, the Conversion Settlement Date by the Conversion Price.

(ii) *Fractional Shares*. The total number of shares of Common Stock due in respect of any conversion of this Note pursuant to this **Section 7**, will be determined on the basis of the total Principal Amount of this Note to be converted with the same Conversion Date; *provided*, *however*, that if such number of shares of Common Stock is not a whole number, then such number will be rounded up to the nearest whole number.

(iii) *Delivery of the Conversion Consideration*. The Company will pay or deliver, as applicable, the Conversion Consideration due upon the conversion of this Note, to the Holder on or before the second (2nd) Business Day (or, if earlier, the standard settlement period for the primary Eligible Exchange (measured in terms of trading volume for its Common Stock) on which the Common Stock are traded) immediately after the Conversion Date for such conversion (the "**Conversion Settlement Date**").

(iv) *Company Failure to Timely Deliver Stock Payments*. If (x) the Company shall fail for any reason or for no reason on or prior to the applicable Conversion Settlement Date to deliver shares of Common Stock in accordance with **Section 7(C)** (such shares to which Holder is entitled referred to as the "**Undelivered Shares**"); and (y) the Holder (whether directly or indirectly, including by any broker acting on the Holder's behalf or acting with respect to such Undelivered Shares) purchases any shares of Common Stock (whether in the open market or otherwise) to cover any such Undelivered Shares (whether to satisfy any settlement obligations with respect thereto of the Holder or otherwise), then, without limiting the Holder's right to pursue any other remedy available to it (whether hereunder, under applicable law or otherwise), the Holder will have the right, exercisable by notice to the Company, to cause the Company to either:

(1) pay, on or before the second (2nd) Business Day after the date such notice is delivered, cash to the Holder in an amount equal to the aggregate purchase price (including any brokerage commissions and other out-of-pocket costs) incurred to purchase such shares (such aggregate purchase price, the "**Covering Price**"); or

(2) promptly deliver, to the Holder, such Undelivered Shares in accordance with this Note, together with cash in an amount equal to the excess, if any, of the Covering Price over the product of (x) the number of such Undelivered Shares; and (y) the Daily VWAP per share of Common Stock on the applicable Conversion Date.

To exercise such right, the Holder must deliver notice of such exercise to the Company, specifying whether the Holder has elected clause (1) or (2) above to apply. If the Holder has elected clause (1) to apply, then the Company's obligation to deliver the Undelivered Shares in accordance with this Note will be deemed to have been satisfied and discharged to the extent the Company has paid the Covering Price in accordance with clause (1). Nothing herein shall limit the Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver shares of Common Stock as required pursuant to the terms hereof. In addition to the foregoing, if the Company fails for any reason to deliver Common Stock to the Holder by the applicable Conversion Settlement Date, the Company shall pay to the Holder, in cash, as liquidated damages and not as a penalty, for each $1,000 of Undelivered Shares (based on the Daily VWAP on the applicable Conversion Settlement Date), $10 per Trading Day (increasing to $20 per Trading Day on the fifth Trading Day after such liquidated damages begin to accrue) for each Trading Day after the Conversion Settlement Date until the cash amount set forth in **Section 7(D)(iv)(1)** is paid to the Holder or the shares of Common Stock are delivered to the Holder pursuant to **Section 7(D)(iv)(2)**.

(v) *Effect of Conversion*. If this Note is converted in full, then, from and after the date the Conversion Consideration therefor is issued or delivered in settlement of such conversion, this Note will cease to be outstanding and all interest will cease to accrue on this Note.

(E) *Common Stock Issued upon Conversion*.

(i) *Status of Conversion Shares; Listing*. Each share of Common Stock delivered pursuant to this Note will be a newly issued or treasury share and will be duly and validly issued, fully paid, non-assessable, free from preemptive rights and free of any Lien or adverse claim (except to the extent of any Lien or adverse claim created by the action or inaction of the Holder or the Person to whom such share will be delivered). If the Common Stock is then listed on any securities exchange, or quoted on any inter-dealer quotation system, then the Company will cause each share of Common Stock issued pursuant to this Note, when delivered, to be admitted for listing on such exchange or quotation on such system.

(ii) *[Reserved.]*

(F) *[Reserved.]*

(G) *[Reserved.]*

(H) *Effect of Certain Recapitalizations, Reclassifications, Consolidations, Mergers and Sales*.

(i) *Generally*. If there occurs:

(1) recapitalization, reclassification or change of the Common Stock (other than (x) changes solely resulting from a subdivision or combination of the Common Stock, (y) a change only in par value or from par value to no par value or no par value to par value and (z) stock splits and stock combinations that do not involve the issuance of any other series or class of securities);

(2) consolidation, merger, combination or binding or statutory share exchange involving the Company;

(3) sale, lease or other transfer of all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, to any Person; or

(4) other similar event,

and, in each case, as a result of such occurrence, the Common Stock is converted into, or is exchanged for, or represents solely the right to receive, other securities or other property (including cash or any combination of the foregoing) (such an event, a "**Common Stock Change Event**," and such other securities or other property, the "**Reference Property**," and the amount and kind of Reference Property that a holder of one (1) share of Common Stock would be entitled to receive on account of such Common Stock Change Event (without giving effect to any arrangement not to issue fractional shares of securities or other property), a "**Reference Property Unit**"), then, notwithstanding anything to the contrary in this Note, at the effective time of such Common Stock Change Event, (x) the Conversion Consideration due upon conversion of any Note will be determined in the same manner as if each reference to any number of shares of Common Stock in this **Section 7** (or in any related definitions) were instead a reference to the same number of Reference Property Units; and (y) for purposes of **Section 7(A)**, each reference to any number of shares of Common Stock in such Section (or in any related definitions) will instead be deemed to be a reference to the same number of Reference Property Units. For these purposes, (I) the Daily VWAP of any Reference Property Unit or portion thereof that consists of a class of common equity securities will be determined by reference to the definition of "Daily VWAP," substituting, if applicable, the reported Bloomberg page data for such class of securities in such definition; and (II) the Daily VWAP of any Reference Property Unit or portion thereof that does not consist of a class of common equity securities, and the Last Reported Sale Price of any Reference Property Unit or portion thereof that does not consist of a class of securities, will be the fair value of such Reference Property Unit or portion thereof, as applicable, determined in good faith by the Company (or, in the case of cash denominated in U.S. dollars, the face amount thereof).

If the Reference Property consists of more than a single type of consideration to be determined based in part upon any form of stockholder election, then the composition of the Reference Property Unit will be deemed to be the weighted average of the types and amounts of consideration actually received, per share of Common Stock, by the holders of Common Stock. The Company will notify the Holder of such weighted average as soon as practicable after such determination is made.

At or before the effective date of such Common Stock Change Event, the Company and the resulting, surviving or transferee Person (if not the Company) of such Common Stock Change Event (the "**Successor Person**") will execute and deliver such instruments or agreements that (x) provides for subsequent conversions of this Note in the manner set forth in this **Section 7(H)**; and (y) contains such other provisions as the Company reasonably determines are appropriate to preserve the economic interests of the Holder and to give effect to the provisions of this **Section 7(H)**. If the Reference Property includes shares of stock or other securities or assets of a Person other than the Successor Person, then such other Person will also execute such instruments or agreements and such instruments or agreements will contain such additional provisions the Company reasonably determines are appropriate to preserve the economic interests of the Holder.

(ii) *[Reserved]*.

(iii) *Compliance Covenant*. The Company will not become a party to any Common Stock Change Event unless its terms are consistent with this **Section 7(H)**.

(I) *Limitations on Conversions.* Notwithstanding anything contained herein to the contrary, the Holder shall not be entitled to convert any portion of this Note until the Company has obtained the approval of the shareholders of the Company for such conversion in accordance with Listing Rule 5635(b) and 5635(d) of The Nasdaq Stock Market, Inc., as applicable, to the extent that, at such time, the Company determines that such approval is required under such Listing Rules for such conversion.

Section 8. [Reserved].

Section 9. Affirmative and Negative Covenants.

(A) *Stay, Extension and Usury Laws*. To the extent that it may lawfully do so, the Company (A) agrees that it will not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law (wherever or whenever enacted or in force) that may affect the covenants or the performance of this Note; and (B) expressly waives all benefits or advantages of any such law and agrees that it will not, by resort to any such law, hinder, delay or impede the execution of any power granted to the Holder by this Note, but will suffer and permit the execution of every such power as though no such law has been enacted.

(B) *Corporate Existence.* Subject to **Section 10**, the Company will cause to preserve and keep in full force and effect:

(i) its corporate existence and the corporate existence of its Subsidiaries in accordance with the organizational documents of the Company or its Subsidiaries, as applicable; and

(ii) the material rights (charter and statutory), licenses and franchises of the Company and its Subsidiaries;

provided, *however*, that the Company need not preserve or keep in full force and effect any such rights (charter and statutory), license or franchise or existence of any of its Subsidiaries if the Board of Directors determines in good faith that (x) the preservation thereof is no longer desirable in the conduct of the business of the Company and its Subsidiaries, taken as a whole; and (y) the loss thereof is not, individually or in the aggregate, materially adverse to the Holder.

(C) *Ranking*. All payments due under this Note (i) shall rank junior to the Existing Notes and the Indebtedness incurred pursuant to the Mack Agreement, and (ii) shall rank senior to all other Indebtedness of the Company (other than the indebtedness described in clause (i)) and any Subordinated Indebtedness.

(D) *Indebtedness; Amendments to Indebtedness*. The Company shall not and shall not permit any Subsidiary to: (a) create, incur, assume, guarantee or be or remain liable with respect to any Indebtedness, other than Permitted Indebtedness; (b) prepay any Indebtedness except for (i) by the conversion of Indebtedness into equity securities (other than Disqualified Stock) and the payment of cash in lieu of fractional shares in connection with such conversion, and (ii) a refinancing of the entire amount of such Indebtedness which does not impose materially more burdensome terms upon the Company or its Subsidiaries than exist in such Indebtedness prior to such refinancing, but with a maturity date which is later than one hundred eighty-one (181) days following the Maturity Date; or (c) amend or modify any documents or notes evidencing any Indebtedness in any manner which shortens the maturity date or any amortization, redemption or interest payment date thereof or otherwise imposes materially more burdensome terms upon the Company or its Subsidiaries than exist in such Indebtedness prior to such amendment or modification without the prior written consent of Holder. The Company shall not and shall not permit any Subsidiary to incur any Indebtedness that would cause a breach or Default under the Notes or prohibit or restrict the performance of any of the Company's or its Subsidiaries' obligations under the Notes, including without limitation, the payment of interest and principal thereon.

(E) *Liens*. The Company will not, and will not permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or permit to exist any Lien of any kind on any asset now owned or hereafter acquired, except Permitted Liens.

(F) [*Reserved*]

(G) *Distributions.* The Company shall not, and shall not allow any Subsidiary to, (a) repurchase or redeem any class of stock or other Equity Interest other than pursuant to employee, director or consultant repurchase plans or other similar agreements provided under plans approved by the Board of Directors; provided, however, in each case the repurchase or redemption price does not exceed the original consideration paid for such stock or Equity Interest, or (b) declare or pay any cash dividend or make a cash distribution on any class of stock or other Equity Interest, except that a Subsidiary of the Company may pay dividends or make distributions to the Company or a parent company that is a direct or indirect Wholly Owned Subsidiary of the Company, or (c) lend money to any employees, officers or directors, or guarantee the payment of any such loans granted by a third party in excess of fifty thousand dollars ($50,000) in the aggregate or (d) waive, release or forgive any Indebtedness owed by any employees, officers or directors in excess of fifty thousand dollars ($50,000) in the aggregate. Within one (1) Business Day following the date on which the Company files an Annual Report on Form 10-K or Quarterly Report on Form 10-Q with the Commission, the Company will provide the Holder with a written notice setting forth the aggregate amount of dividends or distributions made by the Company or any Subsidiary pursuant to this **Section 9(G)** for the period covered by such Annual Report on Form 10-K or Quarterly Report on Form 10-Q, as applicable. Notwithstanding anything herein to the contrary, the Company shall not, and shall not allow any Subsidiary to, declare or pay any cash dividend or make a cash distribution on any class of stock or other Equity Interest if (A) any Event of Default has occurred hereunder and has not been waived by the Holder or (B) any event or circumstance has occurred and is continuing which, with the giving of notice or passage of time or both, could constitute an Event of Default with respect to **Section 11(A)(ii)**, **Section 11(A)(iii)**, **Section 11(A)(x)**, **Section 11(A)(xii)**, **Section 11(A)(xv)** or **Section 11(A)(xvi)**. On or prior to the first (1^{st}) Business Day of each calendar month, the Company shall provide to the Holder a certification, executed on behalf of the Company by the Chief Financial Officer of the Company, certifying whether or not the Company has satisfied the requirements of this **Section 9(G)** during the immediately preceding calendar month." If the Company determines in its sole discretion that any such information constitutes material non-public information, then the Company will so indicate in the certification provided pursuant to this **Section 9(G)** and the Company will concurrently disclose such material non-public information on a Current Report on Form 8-K or otherwise.

(H) [*Reserved*]

(I) *[Reserved]*.

(J) [*Reserved*].

(K) *[Reserved]*.

(L) *[Reserved]*.

(M) *[Reserved]*.

(N) *[Reserved]*.

(O) *[Reserved]*.

(P) *Maintenance of Insurance*. The Company shall maintain, and the Company shall cause each of its Subsidiaries to maintain, insurance with responsible and reputable insurance companies or associations (including, without limitation, comprehensive general liability, hazard, rent and business interruption insurance) with respect to its properties (including all real properties leased or owned by it) and business, in such amounts and covering such risks as is required by any governmental authority having jurisdiction with respect thereto or as is carried generally in accordance with sound business practice by companies in similar businesses similarly situated.

(Q) *Transactions with Affiliates*. Neither the Company, nor any of its Subsidiaries, shall enter into, renew, extend or be a party to, any transaction or series of related transactions (including, without limitation, the purchase, sale, lease, transfer or exchange of property or assets of any kind or the rendering of services of any kind) with any affiliate (other than the Company or any of its Wholly Owned Subsidiaries), except (i) transactions for fair consideration and on terms no less favorable to it than would be obtainable in a comparable arm's length transaction with a Person that is not an affiliate thereof, (ii) loans or advances made by the Company or one of its Subsidiaries to its directors, officers and other employees in the ordinary course of business for reasonable travel and entertainment expenses, and relocation costs up to a maximum of one hundred thousand dollars ($100,000) in the aggregate at any one time outstanding, and (iii) distributions permitted by **Section 9(G)**.

(R) *Restricted Issuances.* The Company shall not, and shall cause its Subsidiaries not to, directly or indirectly, without the prior written consent of the holders of a majority in aggregate principal amount of the Notes then outstanding, (i) issue any Notes (other than as contemplated by this Note) or (ii) issue any other securities or incur any Indebtedness, in each case, that would cause a breach or Default under the Notes or that by its terms would prohibit or restrict the performance of any of the Company's or its Subsidiaries' obligations under the Notes, including without limitation, the payment of interest and principal thereon.

(S) *Independent Investigations*. At the request of the Holder at any time the Holder has determined in good faith that (i) an Event of Default has occurred or (ii) any event or circumstance has occurred and is continuing which, with the giving of notice or passage of time or both, could constitute an Event of Default but the Company has not timely agreed to such determination in writing, the Company shall hire an independent, reputable investment bank selected by the Company and approved by the Holder to investigate as to whether such Event of Default or event or circumstance has occurred (the "**Independent Investigator**"). If the Independent Investigator determines that such Event of Default or event or circumstance has occurred, the Independent Investigator shall notify the Company of such Event of Default or occurrence of such event or circumstance and the Company shall promptly deliver written notice to the Holder of such Event of Default if such Event of Default has occurred. In connection with such investigation, the Independent Investigator may, during normal business hours and upon signing a confidentiality agreement in a form reasonably acceptable to the Company, inspect all contracts, books, records, personnel, offices and other facilities and properties of the Company and its Subsidiaries and, to the extent available to the Company after the Company uses reasonable efforts to obtain them, the records of its accountants (including the accountants' work papers) and any books of account, records, reports and other papers not contractually required of the Company to be confidential or secret, or subject to attorney-client or other evidentiary privilege, and the Independent Investigator may make such copies and inspections thereof as the Independent Investigator may reasonably request. The Company shall furnish the Independent Investigator with such financial and operating data and other information with respect to the business and properties of the Company as the Independent Investigator may reasonably request. The Company shall permit the Independent Investigator to discuss the affairs, finances and accounts of the Company with, and to make proposals and furnish advice with respect thereto to, any of the Company's officers, directors, key employees and independent public accountants (and by this provision the Company authorizes said accountants to discuss with such Independent Investigator the finances and affairs of the Company and any Subsidiaries); provided, that the Company's chief executive officer and chief financial officer shall be invited to join any such discussion, all at such reasonable times, upon reasonable notice, and as often as may be reasonably requested.

(T) Upon delivery by the Company to the Holder (or receipt by the Company from the Holder) of any notice in accordance with the terms of this Note, unless the Company has in good faith determined that the matters relating to such notice do not constitute material, non-public information relating to the Company or any of its Subsidiaries, the Company shall on or prior to 9:00 am, New York City time on the Business Day immediately following such notice delivery date, publicly disclose such material, non-public information on a Form 8-K or otherwise. In the event that the Company believes that a notice contains material, non-public information relating to the Company or any of its Subsidiaries, the Company so shall indicate to the Holder explicitly in writing in such notice (or immediately upon receipt of notice from the Holder, as applicable), and in the absence of any such written indication in such notice (or notification from the Company immediately upon receipt of notice from the Holder), the Holder shall be entitled to presume that information contained in the notice does not constitute material, non-public information relating to the Company or any of its Subsidiaries.

(U) The Company acknowledges and agrees that the Holder is not a fiduciary or agent of the Company, the Holder will not have any obligations hereunder except those obligations expressly set forth herein and the Holder is acting solely in the capacity of an arm's length contractual counterparty to the Company with respect to the Note and not as a fiduciary or agent of the Company. The Company agrees that it will not assert any claim against the Holder based on an alleged breach of fiduciary duty by the Holder in connection with the Note. The Company acknowledges that the Holder shall have no obligation to (a) maintain the confidentiality of any information provided by the Company or (b) refrain from trading any securities while in possession of such information in the absence of a written non-disclosure agreement signed by an officer of the Holder that explicitly provides for such confidentiality and trading restrictions. In the absence of such an executed, written non-disclosure agreement, the Company acknowledges that the Holder may freely trade in any securities issued by the Company, may possess and use any information provided by the Company in connection with such trading activity, and may disclose any such information to any third party.

(V) The Company shall cause this Note and any shares of Common Stock issuable pursuant to this Note to be eligible to be offered, sold or otherwise transferred by the Holder pursuant to Rule 144, without any requirements as to volume, manner of sale, availability of current public information (whether or not then satisfied) or notice under the Securities Act and without any requirement for registration under any state securities or "blue sky" law. If this Note is to be transferred, the Holder shall notify the Company and surrender this Note to the Company (or provide the Company an affidavit in a form reasonably acceptable to the Company that this Note was lost, stolen or destroyed), whereupon the Company will forthwith issue and deliver upon the order of the Holder a new Note, registered as the Holder may request. The Company shall not be obligated to pay any tax which may be payable with respect to any transfer (or deemed transfer) arising in connection with the registration of any certificates for Notes in the name of any Person other than the Holder or any of its Affiliates.

(W) The Company shall at all times have a number of authorized and unissued shares of Common Stock no less than a number of shares of Common Stock equal to the sum of (i) 100% of the maximum number of shares of Common Stock as shall be necessary to satisfy the Company's obligation to issue shares of Common Stock under the warrants then outstanding held by Holder or its affiliates and any other warrants outstanding, plus (ii) an amount equal to the number of shares of Common Stock that the Principal Amount and all accrued interest would convert into (assuming conversion of all amounts outstanding) under this Note, the Existing Notes, and any other convertible instrument of the Company (the "**Required Reserve Amount**"), provided that at no time shall the number of shares of Common Stock reserved pursuant to this **Section 9(W)** be reduced other than in connection with any stock combination, reverse stock split or other similar transaction. If at any time the number of shares of Common Stock authorized and reserved for issuance is not sufficient to meet the Required Reserve Amount, the Company will promptly take all corporate action necessary to authorize and reserve a sufficient number of shares, including, without limitation, calling a special meeting of stockholders to authorize additional shares to meet the Company's obligations hereunder, in the case of an insufficient number of authorized shares, obtain stockholder approval (if required) of an increase in such authorized number of shares, and voting the management shares of the Company in favor of an increase in the authorized shares of the Company to ensure that the number of authorized shares is sufficient to meet the Required Reserve Amount.

Section 10. Successors.

The Company will not consolidate with or merge with or into, or (directly, or indirectly through one or more of its Subsidiaries) sell, lease or otherwise transfer, in one transaction or a series of transactions, all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, to another Person, other than the Holder or any of its Affiliates (a "**Business Combination Event**"), unless:

(A) the resulting, surviving or transferee Person either (x) is the Company or (y) if not the Company, is a corporation (the "**Successor Corporation**") duly organized and existing under the laws of the United States of America, any State thereof or the District of Columbia that expressly assumes (by executing and delivering to the Holder, at or before the effective time of such Business Combination Event, a supplement to this instrument) all of the Company's obligations under this Note; and

(B) immediately after giving effect to such Business Combination Event, no Default or Event of Default will have occurred and be continuing.

At the effective time of any Business Combination Event, the Successor Corporation (if not the Company) will succeed to, and may exercise every right and power of, the Company under this Note with the same effect as if such Successor Corporation had been named as the Company in this Note, and, except in the case of a lease, the predecessor Company will be discharged from its obligations under this Note.

Section 11. Defaults and Remedies

(A) *Events of Default*. "**Event of Default**" means the occurrence of any of the following:

(i) a default in the payment when due of the Principal Amount;

(ii) a default for three (3) Business Days in the payment when due of the interest on this Note;

(iii) a default in the Company's obligation to issue shares pursuant to this Note (or any portion of this Note) in accordance with **Section 7(C)** upon the exercise of the Holder's right with respect thereto;

(iv) [*Reserved*];

(v) a default in the Company's obligation to deliver when due any Event of Default Acceleration Amount;

(vi) any failure to timely deliver an Event of Default Notice or a materially false or inaccurate certification as to whether any Event of Default has occurred;

(vii) a default in any of the Company's obligations or agreements under this Note or the Existing Notes, (in each case, other than a default set forth in clauses **(i)** - **(vi)** or **(viii)** – **(xix)** of this **Section 11(A)**), or a breach of any representation or warranty in any material respect (other than representations or warranties subject to material adverse effect or materiality qualifications, which may not be breached in any respect) of this Note or the Existing Notes; *provided*, *however*, that if such default can be cured, then such default shall not be an Event of Default unless the Company has failed to cure such default within ten (10) Business Days after its occurrence;

(viii) any provision of the Existing Notes at any time for any reason (other than pursuant to the express terms thereof) ceases to be valid and binding on or enforceable against the parties thereto, or the validity or enforceability thereof is contested, directly or indirectly, by the Company or any of its Subsidiaries, or a proceeding is commenced by the Company or any of its Subsidiaries or any governmental authority having jurisdiction over any of them, seeking to establish the invalidity or unenforceability thereof;

(ix) the Company fails to comply with any covenant set forth in **Section 9(D)**, **Section 9(E)**, **Section 9(F)**, **Section 9(G)**, **Section 9(H)**, **Section 9(J)**, **Section 9(K)**, **Section 9(L)**, **Section 9(R), Section 9(W), or Section 9(X)** of this Note;

(x) [Reserved];

(xi) (i) the failure of the Company or any of its Subsidiaries to pay when due or within any applicable grace period any Indebtedness having an individual principal amount in excess of at least five hundred thousand dollars ($500,000) (or its foreign currency equivalent) in the aggregate of the Company or any of its Subsidiaries, whether such Indebtedness exists as of the Issue Date or is thereafter created, and whether such default has been waived for any period of time or is subsequently cured; or (ii) the occurrence of any breach or default under any terms or provisions of any other Indebtedness of at least five hundred thousand dollars ($500,000) (or its foreign currency equivalent) in the aggregate of the Company or any of its Subsidiaries, if the effect of such failure or occurrence is to cause or to permit the holder or holders of any such indebtedness, to cause, Indebtedness having an individual principal amount in excess of five hundred thousand dollars ($500,000) to become or be declared due prior to its stated maturity;

(xii) one or more final judgments, orders or awards (or any settlement of any litigation or other proceeding that, if breached, could result in a judgment, order or award) for the payment of at least five hundred thousand dollars ($500,000) (or its foreign currency equivalent) in the aggregate (excluding any amounts covered by insurance pursuant to which the insurer has been notified and has not denied coverage), is rendered against the Company or any of its Subsidiaries and remains unsatisfied and (i) enforcement proceedings shall have been commenced by any creditor upon any such judgment, order, award or settlement or (ii) there shall be a period of ten (10) consecutive Trading Days after entry thereof during which (A) a stay of enforcement thereof is not in effect or (B) the same is not vacated, discharged, stayed or bonded pending appeal;

(xiii) [Reserved];

(xiv) The Security Agreement shall for any reason fail or cease to create a separate valid and perfected first priority (other than for Existing Notes and the Indebtedness incurred pursuant to the Mack Agreement) Lien on the Collateral, in each case, in favor of the Holder in accordance with the terms thereof, or any material provision of the Security Agreement shall at any time for any reason cease to be valid and binding on or enforceable against the Company or the validity or enforceability thereof shall be contested by any party thereto, or a proceeding shall be commenced by the Company or any governmental authority having jurisdiction over the Company, seeking to establish the invalidity or unenforceability thereof;

(xv) [Reserved];

(xvi) [Reserved];

(xvii) the Company or any of its Significant Subsidiaries, pursuant to or within the meaning of any Bankruptcy Law, either:

(1) commences a voluntary case or proceeding;

(2) consents to the entry of an order for relief against it in an involuntary case or proceeding;

(3) consents to the appointment of a custodian of it or for any substantial part of its property;

(4) makes a general assignment for the benefit of its creditors;

(5) takes any comparable action under any foreign Bankruptcy Law; or

(6) generally is not paying its debts as they become due; or

(xviii) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that either:

(1) is for relief against Company or any of its Significant Subsidiaries in an involuntary case or proceeding;

(2) appoints a custodian of the Company or any of its Significant Subsidiaries, or for any substantial part of the property of the Company or any of its Significant Subsidiaries;

(3) orders the winding up or liquidation of the Company or any of its Significant Subsidiaries; or

(4) grants any similar relief with respect to the Company or any of its Significant Subsidiaries under any foreign Bankruptcy Law,

and, in each case under this **Section 11(A)(xviii)**, such order or decree remains unstayed and in effect for at least thirty (30) days.

(xix) the Company's stockholders approve any plan for the liquidation or dissolution of the Company:

(B) *Acceleration.*

(i) *Automatic Acceleration in Certain Circumstances*. If an Event of Default set forth in **Section 11(A)(xvii)** or **Section 11(A)(xviii)** occurs with respect to the Company (and not solely with respect to a Significant Subsidiary of the Company), then the then outstanding portion of the Principal Amount of, and all accrued and unpaid interest on, this Note will immediately become due and payable without any further action or notice by any Person.

(ii) *Optional Acceleration*. If an Event of Default (other than an Event of Default set forth in **Section 11(A)(xvii)** or **Section 11(A)(xviii)** with respect to the Company and not solely with respect to a Subsidiary of the Company) occurs and has not been waived by the Holder, then the Holder, by notice to the Company, may declare this Note (or any portion thereof) to become due and payable immediately for cash in an amount equal to the Event of Default Acceleration Amount.

(C) *Notice of Events of Default*. Promptly, but in no event later than two (2) Business Days after an Event of Default, the Company will provide written notice of such Event of Default to the Holder (an "**Event of Default Notice**"), which Event of Default Notice shall include (i) a reasonable description of the applicable Event of Default, (ii) the date on which the Event of Default occurred and (iii) the date on which the Default underlying such Event of Default initially occurred, if different than the date on which the Event of Default occurred.

Section 12. RANKING.

All payments due under this Note shall rank (i) junior to the Existing Notes and the Indebtedness incurred pursuant to the Mack Agreement, (ii) effectively senior to all unsecured indebtedness of the Company to the extent of the value of the Collateral securing the Notes for so long as the Collateral so secures the Notes in accordance with the terms hereof and (iii) senior to any Subordinated Indebtedness.

Section 13. Replacement Notes.

If the Holder of this Note claims that this Note has been mutilated, lost, destroyed or wrongfully taken, then the Company will issue, execute and deliver a replacement Note upon surrender to the Company of such mutilated Note, or upon delivery to the Company of evidence of such loss, destruction or wrongful taking reasonably satisfactory to the Company. In the case of a lost, destroyed or wrongfully taken Note, the Company may require the Holder to provide such security or an indemnity that is reasonably satisfactory to the Company to protect the Company from any loss that it may suffer if this Note is replaced.

Section 14. Notices.

Any notice or communication to the Company or Holder will be deemed to have been duly given if in writing and delivered in person or by first class mail (registered or certified, return receipt requested), electronic transmission (including e-mail) (with written confirmation of receipt)) or other similar means of unsecured electronic communication or overnight air courier guaranteeing next day delivery, or to the other's address, which initially is as follows:

If to the Company:

Agrify Corporation
2468 Industrial Row Drive
Troy, Michigan 48084
Attention: Chief Executive Officer

With copy to (which copy shall not constitute notice):

Blank Rome
125 High Street
Boston, MA 02110
Telephone: 617.415.1222
Attention: Frank A. Segall, Esq.
Email: Frank.Segall@BlankRome.com

If to the Holder:

c/o Green Thumb Industries Inc.
325 W. Huron Street, Suite 700
Chicago, Illinois 60654
Attention: Bret Kravitz, General counsel and Matt Mulroe, Assistant General Counsel
Email: bkravitz@gtigrows.com; Matt.Mulroe@gtigrows.com

With copy to (which copy shall not constitute notice):

Dentons US LLP
233 S. Wacker Drive, Suite 5900
Chicago, Illinois 60606
Attention: Ross Docksey and Zac Moskowitz
Email: Ross.Docksey@dentons.com; zac.moskowitz@dentons.com

The Company, by notice to the Holder, may designate additional or different addresses for subsequent notices or communications. The Holder, by notice to the Company, may designate additional or different addresses for subsequent notices or communications.

If a notice or communication is delivered in the manner provided above within the time prescribed, it will be deemed to have been duly given, whether or not the addressee receives it.

Section 15. Successors and Assigns.

All agreements of the Company in this Note will bind its successors and will inure to the benefit of the Holder's successors and assigns. Holder may assign this Note to the extent permitted by law.

Section 16. Severability.

If any provision of this Note is invalid, illegal or unenforceable, then the validity, legality and enforceability of the remaining provisions of this Note will not in any way be affected or impaired thereby.

Section 17. Headings, Etc.

The headings of the Sections of this Note have been inserted for convenience of reference only, are not to be considered a part of this Note and will in no way modify or restrict any of the terms or provisions of this Note.

Section 18. Amendments

This Note may not be amended or modified unless in writing by the Company and the Holder, and no condition herein (express or implied) may be waived unless waived in writing by each party whom the condition is meant to benefit.

Section 19. Governing Law; Waiver of Jury Trial.

All questions concerning the construction, validity, enforcement and interpretation of this Note shall be governed by the internal laws of the State of Delaware, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Delaware or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of Delaware. The Company and each Holder hereby irrevocably submits to the exclusive jurisdiction of the Court of Chancery of the State of Delaware, for the adjudication of any dispute hereunder or with any transaction contemplated hereby, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Note and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed or operate to preclude any Holder from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company’s obligations to such Holder or to enforce a judgment or other court ruling in favor of such Holder. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS NOTE OR ANY TRANSACTION CONTEMPLATED HEREBY.

Section 20. **Submission to Jurisdiction.**

The Company and each Holder (A) agree that any suit, action or proceeding against it arising out of or relating to this Note may be instituted in the Court of Chancery of the State of Delaware; (B) waive, to the fullest extent permitted by applicable law, (i) any objection that it may now or hereafter have to the laying of venue of any such suit, action or proceeding; and (ii) any claim that it may now or hereafter have that any such suit, action or proceeding in such a court has been brought in an inconvenient forum; and (C) submit to the exclusive jurisdiction of such court in any such suit, action or proceeding.

Section 21. **Evidence of Debt.**

A. The Holder shall maintain, in accordance with its customary and usual practice, an account evidencing the indebtedness of the Company to the Holder resulting from each Advance, including the amounts of principal and interest payable and paid to the Holder with respect to such Advance for each day such Advance is outstanding. The entries made in such account shall be conclusive absent manifest error and constitute prima facie evidence of the existence and amounts of the principal and interest payable and the amounts of principal and interest paid, in each case as recorded therein; provided, however, that any error or inaccuracy therein shall not in any manner affect the validity or enforceability of any obligation of the Company to repay (with applicable interest) in accordance with the terms of this Note any Advance actually made by the Holder under this Note.

B. The Holder is authorized to record on **Schedule A** each Advance made to the Company and each payment or prepayment thereof. The entries made by the Holder shall, to the extent permitted by applicable law, be conclusive evidence absent manifest error of the existence and amounts of the obligations of the Company therein recorded; provided, however, that the failure of the Holder to record such payments or prepayments, or any error or inaccuracy therein, shall not in any manner affect the validity or enforceability of any obligation of the Company to repay (with applicable interest) in accordance with the terms of this Note any Advance actually made by the Holder under this Note.

C. In the event of any discrepancy between the entries in the account referred to in **Section 21(A)** and the entries on **Schedule A**, the entries in the account referred to in **Section 21(A)** shall control.

D. The books and records of the Holder and statements of account issued by the Company shall be admissible in evidence in any action or proceeding arising out of, based upon, or in any way connected to, this Note.

Section 22. Enforcement Fees.

The Company agrees to pay all costs and expenses of the Holder incurred as a result of enforcement of this Note and the collection of any amounts owed to the Holder hereunder (whether in cash, Common Stock or otherwise), including, without limitation, reasonable attorneys' fees and expenses.

Section 23. Electronic Execution.

The words "execution," "signed," "signature," and words of similar import in the Note shall be deemed to include electronic or digital signatures or the keeping of records in electronic form, each of which shall be of the same effect, validity, and enforceability as manually executed signatures or a paper-based recordkeeping system, as the case may be, to the extent and as provided for under applicable law, including the Electronic Signatures in Global and National Commerce Act of 2000 (15 U.S.C. §§ 7001-7006), the Electronic Signatures and Records Act of 1999 (N.Y. State Tech. §§ 301-309), or any other similar state laws based on the Uniform Electronic Transactions Act.

* * *

Exhibit A

Conversion Notice

AGRIFY CORPORATION

Secured Convertible Note due 2026

Subject to the terms of this Note, by executing and delivering this Conversion Notice, the undersigned Holder of this Note directs the Company to convert the following Principal Amount of this Note: $_____,000 in accordance with the following details.

Shares of Common Stock to be delivered (the "**Delivered Shares**"):

_____

Accrued interest amount:

_____

Date: _____

_____
(Legal Name of Holder)

For the purposes of that certain Irrevocable Letter of Instructions to Transfer Agent, dated as of March 8, 2023, by and between the Company and the Holder (the "**Instruction Letter**"), to the extent the Delivered Shares exceed the Note Shares Reserve (as such term is defined in the Instruction Letter) as of the date hereof (such amount, the "**Excess Shares**"), the Note Shares Reserve shall be deemed to be increased by a number of shares of Common Stock equal to the Excess Shares.

By: _____
Name:
Title:

SCHEDULE A

ADVANCES

Date of Advance	Amount of Advance	Name of Person Making the Notation
	$	

Exhibit 10.1

CONFIDENTIAL SEVERANCE AGREEMENT AND FULL AND GENERAL RELEASE

The purpose of this Confidential Severance Agreement and Full and General Release (this "Agreement") is to set forth the terms and conditions of your separation from employment with Agrify Corporation, a Nevada corporation ("Agrify" or the "Company").

For good and valuable consideration, the receipt and sufficient of which is hereby acknowledged, the Company and **Raymond Chang** ("Employee" or "you") agree as follows:

1. Separation Date. Employee's separation from employment with the Company will be effective **November 5, 2024** (the "Separation Date").

2. Benefits Payable.

(a) Salary Continuation. In addition to Employee's regular compensation earned through the Separation Date, the Company will provide Employee with severance payments equal to **One Million Dollars and Zero Cents ($1,000,000.00)**, less applicable taxes, withholdings, and any deductions authorized by this Agreement (the "Severance"). Payment of the Severance will be made in equal installment payments, using Employee's usual payroll method, and will begin being made as of the next regularly scheduled pay day following the Effective Date of this Agreement as defined in Section 12(h).

(b) COBRA Reimbursement. Subject to timely election by Employee, the Company will provide Employee with reimbursement for the premiums for continued health benefits pursuant to the Consolidated Omnibus Budget Reconciliation Act (COBRA) for himself and his dependents currently enrolled in any Company group health benefit plans as of the Separation Date ("COBRA Reimbursement"). Payment of the COBRA Reimbursement will be made in equal installment payments, using Employee's usual payroll method, and will be made on the next regular pay day following the Company's execution of this Agreement and following the Effective Date of this Agreement as described in Section 12(h) and through the earlier of: (i) February 1, 2027; or (ii) the last date in which Employee is eligible for COBRA or otherwise allowable by law. However, if Employee becomes eligible to receive health insurance benefits from a new employer, he will no longer be eligible for the COBRA Reimbursement from the Company. To the extent applicable, Employee shall receive under separate cover information concerning rights to continue Employee's participation in any Company-sponsored group health insurance plan, in accordance with applicable law.

3. Employee's Acknowledgments. Employee acknowledges that the Severance is good and valuable consideration in exchange for this Agreement, and further acknowledges and agrees that: (i) other than the Severance, the Company has paid Employee all compensation due and owing to Employee related to any employment relationship between Employee and the Company, including, without limitation, all salary, commissions, bonuses, sick pay, vacation pay, paid time off, and/or any other benefits; (ii) Employee is not aware of any unpaid wages, vacation, bonuses, expense reimbursements, or other amounts owed to Employee by Company, other than the Severance specifically promised in this Agreement; (iii) Employee has not been denied any request for leave to which Employee believes the Employee was legally entitled, and Employee was not otherwise deprived of any of Employee's rights under the Family and Medical Leave Act or any similar state or local statute; (iv) Employee has not suffered any injuries or contacted any illness in the workplace that the Employee believes arose out of Employee's employment with Company and occurred during the course of such employment; (v) Employee has not assigned or transferred, or purported to assign or transfer, to any person, entity, or individual whatsoever, any of the claims released in this Agreement; and (vi) that as of the Separation Date, Employee is no longer an employee of the Company and may under no circumstance represent Employee to be in any way connected with or a representative of such company.

4. Release. In consideration of the Severance set forth above, and as a material inducement to the Company to enter into this Agreement, you agree, for yourself, your heirs, executors, administrators, representatives, successors and assigns and anyone claiming by, through or for you, or anyone making a claim on your behalf (for purposes of this Section, "Employee"), to irrevocably and unconditionally waive, **RELEASE** and **FOREVER DISCHARGE** ("Release") Agrify and its present, past, and future parents, subsidiaries, and affiliated corporations, divisions, affiliates, predecessors, principals, partners, joint venturers, representatives, successors, and assigns, and their past and present owners, directors, officers, employees, stockholders, attorneys, agents, and insurers, and all persons acting by, through, under or in concert with any of them and all other persons, firms and corporations whomsoever (collectively, "Released Parties") from any and all liability, actions, causes of actions, common law claims, statutory claims under state or federal law including but not limited to any rights and claims under Title VII of the Civil Rights Act of 1964 (Title VII); the Americans with Disabilities Act (ADA); the Family and Medical Leave Act (FMLA); the Fair Labor Standards Act (FLSA); the Equal Pay Act; the Employee Retirement Income Security Act (ERISA) (regarding unvested benefits); the Civil Rights Act of 1991; Section 1981 of U.S.C. Title 42; the Fair Credit Reporting Act (FCRA); the Worker Adjustment and Retraining Notification (WARN) Act; the National Labor Relations Act (NLRA); the Age Discrimination in Employment Act (ADEA); the Older Workers' Benefit Protection Act of 1990; the Uniform Services Employment and Reemployment Rights Act (USERRA); the Genetic Information Nondiscrimination Act (GINA); the Consolidated Omnibus Budget Reconciliation Act of 1985; the Immigration Reform and Control Act (IRCA); the Massachusetts Fair Employment Practices Act, which includes Massachusetts General Law Chapter 151B, as amended; the Massachusetts Privacy Statute, G.L. c. 214, § 1B, as amended; the Massachusetts Payment of Wages Act, G.L. c. 149, § 148 et seq., as amended (the "Wage Act") – including specifically (but without limitation) all claims under the Wage Act for (a) non-payment of wages (Mass. G.L. c. 149, § 148), (b) retaliation (Mass. G.L. c. 149, § 148A), and (c) misclassification (Mass. G.L. c. 149, § 148B); the Massachusetts Minimum Fair Wage Law G.L. c. 151 et seq., as amended; the Massachusetts Sexual Harassment Statute, G.L. c. 214, § 1C, as amended; the Massachusetts Consumer Protection Act, G.L. c. 93A, as amended; the Massachusetts Civil Rights Act, G.L. c. 12, § 11, as amended; the Massachusetts Paid Family and Medical Leave Act, G.L. c. 175 M, § 1 et seq., as amended; the Massachusetts Earned Sick Time law, Mass. G.L. c. 149, § 148C, as amended; the Massachusetts Equal Pay Act, G.L. c. 149, § 105A, et seq., as amended; the Massachusetts Equal Rights Act, G.L. c. 93, as amended; Sections 1981 through 1988 of Title 42 of the United States Code, as amended; Section 510 of the Employee Retirement Income Security Act of 1974, as amended (ERISA); any claim under any local, state or federal common law, statute, regulation or ordinance, breach of contract claims, breach of any collective bargaining agreement claims, and all demands, damages, expenses, fees (including attorney's fees, court costs, expert witness fees, etc.), which Employee may now or hereafter have against the Released Parties and/or have on account of, arising out of, or in connection with all interactions, transactions or contracts, express or implied, between Employee and the Released Parties, including, but not limited to Employee's employment and the termination thereof, through the date of this Agreement. **THIS IS A GENERAL RELEASE OF ALL CLAIMS.**

Notwithstanding the foregoing, Employee does not Release any of the Released Parties as it relates to (i) those certain convertible promissory notes of the Company held by Employee or his affiliates, (ii) the sale of his purchase of common stock and warrants to an affiliate of Green Thumb Industries, Inc., or (iii) any future transaction involving Employee and the Company that has not been consummated as of the date hereof.

Nothing in this Agreement shall limit or impede your right to file or pursue an administrative charge with, or participate in, any investigation before the Equal Employment Opportunity Commission ("EEOC"), any Federal, State, or Local Agency, or to file a claim for unemployment benefits, and/or any causes of action which by law you may not legally waive. For example, nothing in this Agreement limits Employee's ability to file for unemployment compensation; pursue claims for breach of this Agreement; file a workers' compensation claim; or pursue any claims that arise after the date Employee signs this Agreement.

THIS MEANS THAT BY SIGNING THIS AGREEMENT YOU WILL HAVE WAIVED ANY RIGHT YOU MAY HAVE TO RECOVER IN A LAWSUIT OR OTHER ACTION AGAINST RELEASED PARTIES, INCLUDING BUT NOT LIMITED TO AGRIFY, BASED ON ANY ACTIONS OR OMISSIONS MADE BY THE RELEASED PARTIES, INCLUDING BUT NOT LIMITED TO CLAIMS WHICH IN ANY WAY ARISE FROM OR RELATE TO YOUR EMPLOYMENT RELATIONSHIP AND THE SEPARATION OF YOUR EMPLOYMENT WITH AGRIFY, UP TO THE DATE OF THE SIGNING OF THIS AGREEMENT.

5. Covenant Not to Sue. Employee agrees and covenants, except as allowed by law with regard to this Agreement, not to sue or file any claims against the Released Parties with regard to any matters arising prior to the execution of this Agreement. Employee represents and warrants that no such claim has been filed to date.

6. Non-Disparagement. Employee agrees not to in any way or to any extent slander, libel, disparage, or otherwise impair the reputation, goodwill, or commercial interest of the Company and the Released Parties, including but not limited to their employees, officers, directors, management, shareholders, and/or the Company's or the Released Parties' performance, work product or method of operating. Employee agrees that Employee will not, without first obtaining written approval from the Company: (i) make any public statement in the nature of a press release or media interview with respect to any aspect of Employee's employment with the Company or any of its operating units, subsidiaries, affiliates or parents (including, but not limited to, any social networking websites such as Facebook, Twitter, Instagram, and LinkedIn, as well as Glassdoor and statements made under a pseudonym), or (ii) make any statement, written or oral, with respect to past or projected future financial performance of the Company or any of its operating units, subsidiaries, affiliates or parents

7. Permitted Disclosures. Nothing in this Agreement shall be construed to prevent disclosure of Confidential Information as may be required by applicable law or regulation, or pursuant to the valid order of a court of competent jurisdiction or an authorized government agency, provided that the disclosure does not exceed the extent of disclosure required by such law, regulation, or order. Employee shall promptly provide written notice of any such order to the Company. Furthermore, nothing in this Agreement prohibits or restricts Employee's testimony in an administrative, legislative, or judicial proceeding, as requested by court order, subpoena, or written request from an administrative agency or the legislature, regarding alleged criminal conduct or alleged sexual harassment. Further, this Agreement in no way prohibits or is intended to restrict any protected rights under Section 7 of the National Labor Relations Act, or otherwise prohibit disclosing information as permitted by law.

8. Confidential Information. Employee agrees not to disclose any "Confidential Information" which Employee acquired as an employee of the Company to any other person or entity, or use such information in any manner that is detrimental to the interest of the Company or entities or individuals with whom the Company does business or is proprietary or trade secret information. "Confidential Information" shall mean information, material, and trade secrets proprietary to the Company or to any related or affiliated entity of the Company or designated as confidential by the Company, whether or not owned or developed by the Company, of which Employee obtained knowledge or to which Employee obtained access, through or as a result of the Services provided to the Company or to any related or affiliated entity of the Company (including information conceived, originated, discovered or developed in whole or in part by Employee in connection with the Services provided to the Company or to any related or affiliated entity of the Company). Without limiting the generality of the foregoing, Confidential Information shall include, but is not limited to, the following types of information and other information of a similar nature (whether or not reduced to writing or still in development): data, documentation, diagrams, flow charts, formulas, research, economic and financial analysis, developments, processes, procedures, employment policies, employment practices, employment procedures, "know how," marketing techniques and materials, marketing and development plans, customer names, customer lists, and other information related to customers, price lists, pricing policies, the Company-derived market information and financial information.

Employee shall not be held criminally or civilly liable under any federal or state trade-secret law for the disclosure of the Company's trade secrets that is made in confidence to a federal, state, or local government official or to an attorney solely for the purpose of reporting or investigating a suspected violation of law. Employee shall not be held criminally or civilly liable under any federal or state trade- secret law for the disclosure of the Company's trade secrets that is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. If Employee files a lawsuit for retaliation by the Company for reporting a suspected violation of law, Employee may disclose the Company's trade secrets to Employee's attorney and use the trade-secret information in the court proceeding, so long as Employee files any document containing the trade secrets under seal and does not disclose the trade secrets, except pursuant to court order.

9. Injunctive Relief/Breach of this Agreement. Employee acknowledges that any breach of this Agreement would cause irreparable injury to the Company and/or the Released Parties and that their remedy at law would be inadequate and, accordingly, consents to and agrees that temporary and permanent injunctive relief may be granted, without bond, in any proceeding which may be brought to enforce this Agreement, without the necessity of proof of actual damage. This right to an injunction shall not prohibit the Company from pursuing any other remedies available to it including, but not limited to, the recovery of damages. Employee further agrees that the Company may provide a copy of this Agreement to any prospective employer of Employee.

If Employee violates the terms of this Agreement, Employee (i) shall forfeit all right to future benefits under this Agreement; (ii) shall refund to the Company the Severance paid by the Company; (iii) must pay reasonable attorneys' fees and all other costs incurred by the Company as a result of Employee's breach; and (iv) acknowledges that the Company may pursue any other remedies available to it as a result of Employee's breach including, but not limited to, the recovery of damages.

10. Confidentiality. The Parties agree to keep strictly confidential the terms and conditions of this Agreement, including amounts in this Agreement, and shall not disclose them to third parties, not including unless compelled or allowed to do so by law, the following: Employee's spouse, Employee's or the Company's legal or financial adviser, National Labor Relations Board investigators or other government officials who seek such information in the course of their official duties, other employees of the Company, labor unions, or media outlets.

11. Property. Employee shall return to the Company all tangible and intangible property and Confidential Information belonging to the Company to the Company no later than five (5) business days after the Separation Date, and the Company's obligation to provide Employee with any benefits under this Agreement is subject to and conditioned on Employee's timely return of all Company property. Such property includes but is not limited to any and all financial records and data; any written material in Employee's possession including but not limited to product information, engineering information, customer lists, and the Company policies and procedures; automobiles; credit cards; keys; equipment not otherwise purchased; product and/or customer lists and data; contracts; personnel information; project development information; written proposals and studies; and proprietary software purchased or developed by or for the benefit and use of the Company. Employee further represents and warrants that Employee has not retained any copies, electronic or otherwise, of such property.

12. Provisions Required by the Age Discrimination in Employment Act/Older Workers Benefit Protection Act. Employee acknowledges that:

(a) Employee is specifically releasing any and all claims, whether known or unknown, which are based on the Age Discrimination in Employment Act;

(b) This Agreement does not waive rights or claims that arise after the date this Agreement is executed;

(c) Employee has signed this Agreement of Employee's own free will in exchange for the consideration stated above, which Employee acknowledges constitutes full, fair, reasonable and adequate consideration, to which Employee is not otherwise entitled, for the affirmations, certifications, representations and promises made herein;

(d) Employee has carefully read and fully understands all the provisions of this Agreement, including Section 12 of this Agreement entitled "Provisions Required by the Age Discrimination in Employment Act/Older Workers Benefit Protection Act," and that Employee has been afforded at least twenty-one (21) days to consider the terms hereof; Employee agrees that changes made to this Agreement at Employee's request do not restart the twenty-one (21) day period which Employee has to review this Agreement;

(e) Employee has been advised in writing by this Agreement that Employee should consult with an attorney prior to executing this Agreement;

(f) Employee understands and agrees that this Agreement shall not become effective or enforceable until seven (7) calendar days after it is executed by Employee and during that seven (7) day period (the "Revocation Period") Employee may revoke or rescind this Agreement. If Employee wishes to revoke or rescind this Agreement, Employee agrees to do so in writing within seven (7) days and deliver such written notice of Employee's intent to revoke by certified mail to: Agrify Corporation, 2468 Industrial Row Drive, Troy, Michigan 48084, Attention: Chief Executive Officer. If Employee does not timely revoke or rescind, this Agreement goes into force and effect on the eighth day following its execution; and

(g) Employee also understands that should Employee decide to revoke or rescind this Agreement within seven (7) days of signing, the Agreement will not be effective and the monies and other consideration which the Company has promised to provide Employee shall not be paid or provided.

(h) This Agreement shall become effective on the eighth (8th) day following your signing of this Agreement (the "Effective Date").

13. Future Employment. Employee agrees that the Company will not be obligated to offer employment to Employee or to hire Employee for any reason, regardless of the circumstances, at any time on or after the date of this Agreement.

14. Cooperation. Employee agrees to make themselves reasonably available to the Company to respond to requests by the Company for information pertaining to or relating to the Company, any entity related to the Company, or any of its agents, officers, directors, or employees. Employee will cooperate fully with the Company in connection with any and all existing or future depositions, litigation, or investigations brought by or against the Company, any entity related to the Company, or any of its agents, officers, directors, or employees, whether administrative, civil, criminal in nature, in which and to the extent the Company deems your cooperation necessary. In the event Employee is subpoenaed in connection with any litigation or investigation, Employee will immediately notify the Company. Reasonable actual expenses incurred by the Employee and pre-approved by the Company arising from these matters will be reimbursed by the Company upon sufficient proof. Employee agrees to comply with any executed agreement concerning confidential Information and/or non-disclosure agreement, or any such other similar agreement. Employee agrees to comply with any executed agreement concerning confidential Information and/or non-disclosure agreement, or any such other similar agreement.

15. Taxes. Employee hereby agrees to indemnify the Company and the Released Parties from any liability for taxes arising out of the Severance including, but not limited to liability arising from Section 409A of the Internal Revenue Code of 1986, as amended.

16. Successors. This Agreement binds and inures to the benefit of Employee's heirs, administrators, representatives, executors, successors and assigns, and all Released Parties and their heirs, administrators, representatives, executors, successors and assigns.

17. No Admission. This Agreement represents a full, complete and binding compromise of the parties and shall not be construed as an admission by any party of any liability or of any contention or allegation made by any other party.

18. Entire Agreement/Modification. This Agreement shall be construed as a whole according to its fair meaning and not strictly for or against Employee, the Company or any Released Party. This Agreement sets forth the entire Agreement between Employee and the Company, and may not be modified except by a writing signed by both you and an authorized official of the Company.

19. Severability. The parties hereto believe that the provisions of this Agreement are reasonable and fair in all respects, and are necessary to protect the interests of the parties. However, in case any one or more of the provisions or parts of a provision contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or part of a provision of this Agreement or any other jurisdiction, but this Agreement shall be reformed and construed in any such jurisdiction as if such invalid or illegal or unenforceable provision or part of a provision had never been contained herein and such provision or part shall be reformed so that it would be valid, legal and enforceable to the maximum extent permitted in such jurisdiction.

20. CONFLICT OF LAW. THIS AGREEMENT SHALL BE GOVERNED BY, CONSTRUED, APPLIED AND ENFORCED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF MASSACHUSETTS, AND NO DOCTRINE OF CHOICE OF LAW SHALL BE USED TO APPLY ANY LAW OTHER THAN THAT OF MASSACHUSETTS, AND NO DEFENSE, COUNTERCLAIM OR RIGHT OF SET-OFF SHALL BE GIVEN OR ALLOWED BY THE LAWS OF ANY OTHER STATE OR JURISDICTION, OR ARISING OUT OF THE ENACTMENT, MODIFICATION OR REPEAL OF ANY LAW, REGULATION, ORDINANCE OR DECREE OF ANY FOREIGN JURISDICTION INTERPOSED IN ANY ACTION HEREON. SUBJECT TO SECTION 21, THE PARTIES AGREE THAT ANY ACTION OR PROCEEDING TO ENFORCE OR ARISING OUT OF THIS AGREEMENT MAY BE COMMENCED IN THE STATE OR FEDERAL COURTS IN OR SERVING BOSTON, MASSACHUSETTS. THE PARTIES CONSENT TO SUCH JURISDICTION, AGREE THAT VENUE WILL BE PROPER IN SUCH COURTS AND WAIVE ANY OBJECTIONS BASED UPON FORUM NON CONVENIENS. THE CHOICE OF FORUM SET FORTH IN THIS SECTION 21 SHALL NOT BE DEEMED TO PRECLUDE THE ENFORCEMENT OF THIS AGREEMENT IN ANY OTHER JURISDICTION.

21. Arbitration. Employee hereby waives and shall not seek a jury trial in any lawsuit, proceeding, claim, counterclaim, defense or other litigation or dispute under or in respect of this Agreement. Employee agrees that any such dispute relating to or in respect of this Agreement, (other than injunctive or equitable relief which, at the Company's option, may be sought in any federal or state court having jurisdiction) shall be submitted to, and resolved exclusively pursuant to arbitration in accordance with the National Rules for the Resolution of Employment Disputes of the American Arbitration Association including Expedited Procedures for Emergency Relief which are expressly adopted herein. Such arbitration shall take place in the Boston, Massachusetts Metropolitan Area or other mutually agreeable location and shall be subject to the substantive laws of the State of Massachusetts. Decisions pursuant to such arbitration shall be final, conclusive and binding on the parties. The prevailing party in arbitration shall be entitled to recover reasonable costs and attorneys' fees from the other party. Upon the conclusion of arbitration, the parties may apply to any federal or state court having jurisdiction to enforce the decision pursuant to such arbitration. **EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT**.

[SIGNATURES ARE ON THE NEXT PAGE]

I have carefully read this Agreement; I fully understand the Agreement's contents and the effects thereof, including the Release in Section 4, I understand that I have a right to review this Agreement with an attorney of my choice, and I have executed the same of my own free will, without any coercion by the Company, the Released Parties, or any of the Company's or the Released Parties' directors, officers, employees, agents or representatives.

Raymond Chang

By: /s/ Raymond Chang — November 5, 2024
Date

Agrify Corporation

By: /s/ Krishnan Varier — November 5, 2024
Title: Director — Date

Exhibit 99.1

Agrify Secures Financing from Green Thumb Industries and Announces New Leadership

TROY, Mich., Nov. 05, 2024 (GLOBE NEWSWIRE) -- Agrify Corporation (Nasdaq: AGFY) ("Agrify" or the "Company"), a leading provider of innovative cultivation and extraction solutions for the cannabis industry, today announced that its Board of Directors has approved a $20 million convertible secured note (the "Financing"), of which $10M will be drawn upon at closing, from a wholly-owned subsidiary of Green Thumb Industries Inc. ("Green Thumb") (CSE: GTII) (OTCQX: GTBIF), a leading national cannabis consumer packaged goods company and owner of RISE Dispensaries. Prior to this financing, the Green Thumb subsidiary acquired an ownership stake in Agrify through the purchase of common stock and warrants (the "Transaction") from its outgoing Chairman and CEO Raymond Chang and outgoing Director I-Tseng Jenny Chan. Agrify will continue to operate as an independent business and was not a participant in the Transaction. Following the Transaction and Financing, Agrify retains the majority of its existing management team and all of its independent Directors.

Concurrent with the Financing, Raymond Chang resigned as Chairman and CEO of Agrify and I-Tseng Jenny Chan stepped down from the Board. Following the acceptance of the resignations, the Agrify Board appointed Benjamin Kovler, Richard Drexler, and Armon Vakili to replace the outgoing Directors, bringing the total Board membership to six, the majority of whom are independent. In addition, Mr. Kovler was appointed to the roles of Agrify's Chairman and Interim CEO following Mr. Chang's resignation. Mr. Kovler, the Founder, Chairman and Chief Executive of Green Thumb, will retain his leadership and responsibilities at Green Thumb, where he is focused on creating value for Green Thumb shareholders. Over his tenure at Green Thumb, he has successfully grown the company into one of the most profitable cannabis consumer packaged goods and retail businesses operating in the U.S. today. Mr. Drexler has over 40 years' experience in corporate leadership roles as well as serving on several public company boards and audit committees. Mr. Vakili currently serves as Vice President of Strategic Initiatives & Partnerships at Green Thumb and has over a decade of experience in corporate affairs, mergers and acquisitions, private equity and finance.

Krishnan Varier, a member of the Agrify Board, said, "This is great news for Agrify at a time when the Company needed a capital infusion. I am confident that this new investment from Green Thumb and Ben's leadership will provide Agrify the necessary financing support and operational expertise to help position us for growth and long-term value creation for shareholders. We especially look forward to working with our new Board members, given their proven track records of successes. On behalf of our Board, I want to thank Raymond for his numerous contributions to the Company over the years. He has done a great job preparing us for our next phase of growth and we wish him nothing but the best in his future endeavors."

Ben Kovler added, "We believe Green Thumb's financial investment and the new Directors' experience can help Agrify unlock its untapped potential. Raymond and his team have worked hard to develop world-class proprietary technologies for the cultivation and extraction businesses, and we thank him for his support during this transition. Given Green Thumb's thoughtful and prudent approach to capital allocation, we see significant opportunity ahead to assist in the creation of value for shareholders via Agrify's non-plant touching assets. We are excited to be a significant owner of Agrify and I look forward to working with Krish, Brian and team right away."

Outgoing CEO, Raymond Chang, commented, “This is a great transaction for all our shareholders and employees. It has been an exciting journey for us, and I am incredibly proud of the entire Agrify team for what we have accomplished. I am confident that Agrify and the team are in experienced hands with its new leadership, and I am looking forward to focusing on my next chapter.”

About Agrify (Nasdaq: AGFY)

Agrify is a leading provider of innovative cultivation and extraction solutions for the cannabis industry, bringing data, science, and technology to the forefront of the market. Agrify’s proprietary micro-environment-controlled Vertical Farming Units (VFUs) enable cultivators to produce the highest quality products with unmatched consistency, yield, and ROI at scale. Agrify’s comprehensive extraction product line, which includes hydrocarbon, ethanol, solventless, post-processing, and lab equipment, empowers producers to maximize the quantity and quality of extract required for premium concentrates. For more information, please visit Agrify at https://agrify.com.

Forward-Looking Statements

This press release contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995 concerning Agrify and other matters. All statements contained in this press release that do not relate to matters of historical fact should be considered forward-looking statements including, without limitation, statements regarding the expected benefits to be derived from the Green Thumb investment and the addition of new Directors, and Agrify’s growth and future prospects. In some cases, you can identify forward-looking statements by terms such as “may,” “will,” “should,” “expects,” “plans,” “anticipates,” “could,” “intends,” “targets,” “projects,” “contemplates,” “believes,” “estimates,” “predicts,” “potential” or “continue” or the negative of these terms or other similar expressions. The forward-looking statements in this press release are only predictions. We have based these forward-looking statements largely on our current expectations and projections about future events and financial trends that we believe may affect our business, financial condition and results of operations. Forward-looking statements involve known and unknown risks, uncertainties and other important factors that may cause our actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by the forward-looking statements. You should carefully consider the risks and uncertainties that affect our business, including those described in our filings with the Securities and Exchange Commission (“SEC”), including under the caption “Risk Factors” in our Annual Report on Form 10-K filed for the year ended December 31, 2023 with the SEC, which can be obtained on the SEC website at www.sec.gov. These forward-looking statements speak only as of the date of this communication. Except as required by applicable law, we do not plan to publicly update or revise any forward-looking statements, whether as a result of any new information, future events or otherwise. You are advised, however, to consult any further disclosures we make on related subjects in our public announcements and filings with the SEC.

Company Contacts

Agrify Investor Relations
IR@agrify.com
(857) 256-8110