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): **March 7, 2025**

FRESH VINE WINE, INC.
(Exact name of registrant as specified in its charter)

Nevada	**001-41147**	**87-3905007**
(State or Other Jurisdiction of Incorporation)	(Commission File Number)	(I.R.S. Employer Identification No.)

P.O. Box 78984
Charlotte, NC 28271
(Address of Principal Executive Offices) (Zip Code)

(855) 766-9463
(Registrant's telephone number, including area code)

Not Applicable
(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	VINE	NYSE American

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.

Agreement and Plan of Merger

On March 7, 2025, Fresh Vine Wine, Inc., a Nevada corporation ("Fresh Vine"), Amaze Holdings Inc., a Delaware corporation and wholly owned subsidiary of Fresh Vine ("Merger Sub"), Amaze Software, Inc., a Delaware corporation ("Amaze"), the stockholders of Amaze listed on Schedule I thereto (each, a "Holder" and together the "Holders"), and Aaron Day, solely in his capacity as the Holders' Representative (the "Holders' Representative"), entered into an Amended and Restated Agreement and Plan of Merger (the "Merger Agreement"). On March 7, 2025 Fresh Vine completed the acquisition of Amaze. Amaze is an end-to-end, creator-powered commerce platform offering tools for seamless product creation, advanced e-commerce solutions, and scalable managed services.

Pursuant to the Merger Agreement, (i) Merger Sub merged with and into Amaze (the "Merger") with Amaze as the surviving company and a wholly owned subsidiary of Fresh Vine, and (ii) the aggregate merger consideration paid by Fresh Vine in connection with the acquisition included 750,000 shares of Fresh Vine's Series D Convertible Preferred Stock, par value $0.001 per share ("Series D Preferred Stock"), plus warrants (the "Merger Warrants") to purchase an aggregate of 8,750,000 shares of Fresh Vine's common stock, par value $0.001 per share (the "Common Stock").

The Merger Agreement contains various covenants of the parties, including covenants providing for (a) Fresh Vine to prepare and a file with the Securities and Exchange Commission (SEC) a proxy statement related to the solicitation of stockholder votes to approve the Fresh Vine Stockholder Matters (as defined in the Merger Agreement), including the issuance of shares of Common Stock in excess of the Exchange Share Cap and Individual Holder Share Cap (as defined in the Certificate) and the resulting change in control of Fresh Vine; and (b) for Fresh Vine to prepare and file with the SEC a registration statemen for the purpose of registering for resale the shares of Common Stock issuable upon conversion of the Series D Preferred Stock and exercise of the Merger Warrants.

The Merger Agreement contains representations, warranties, and covenants that the respective parties made to each other as of the date of such agreement or other specific dates. The assertions embodied in those representations, warranties and covenants were made for purposes of the contract among the respective parties and are subject to important qualifications and limitations agreed to by the parties in connection with negotiating the Merger Agreement. It is not intended to provide any other factual information about the parties to the Merger Agreement. In particular, the representations, warranties, covenants and agreements contained in the Merger Agreement, which were made only for purposes of the Merger Agreement and as of specific dates, were solely for the benefit of the parties to the Merger Agreement, may be subject to limitations agreed upon by the contracting parties (including being qualified by confidential disclosures made for the purposes of allocating contractual risk between the parties to the Merger Agreement instead of establishing these matters as facts) and may be subject to standards of materiality applicable to the contracting parties that differ from those applicable to investors and reports and documents filed with the SEC. Investors should not rely on the representations, warranties, covenants and agreements, or any descriptions thereof, as characterizations of the actual state of facts or condition of any party to the Merger Agreement. In addition, the representations, warranties, covenants and agreements and other terms of the Merger Agreement may be subject to subsequent waiver or modification. Moreover, information concerning the subject matter of the representations and warranties and other terms may change after the date of the Merger Agreement, which subsequent information may or may not be fully reflected in Fresh Vine's public disclosures

Series D Preferred Stock

On March 7, 2025, Fresh Vine filed a Certificate of Designation of the of Preferences, Rights and Limitations of Series D Convertible Preferred Stock (the "Certificate") with the Secretary of State of the State of Nevada, designating 750,000 shares of preferred stock as Series D Preferred Stock.

Stated Value. Each share of Series D Preferred Stock has a stated value of $100.00 (the "Stated Value").

Rank; Liquidation Preference. The Series D Preferred Stock ranks junior to Fresh Vine's Series A convertible preferred stock and Series B convertible preferred stock and ranks senior to Fresh Vine's Common Stock. Upon any liquidation, dissolution or winding-up of Fresh Vine, the holders of Series D Preferred Stock will be entitled to be paid an amount equal to the Stated Value, plus any accrued but unpaid dividends, before any distribution or payment will be made to the holders of Common Stock. Any remaining assets of Fresh Vine available for distribution to its stockholders will be distributed among the holders of Series A Convertible Preferred Stock, holders of Series B Convertible Preferred Stock, holders of Series D Preferred Stock and holders of Common Stock, pro rata based on the number of shares held by each such holder on an as-if converted basis.

Dividends. Holders of Series D Preferred Stock are entitled to receive dividends (on an as-if converted basis) equal to and in the same form as dividends actually paid on shares of the Common Stock when, as and if such dividends are paid on shares of the Common Stock.

Conversion. Each share of Series D Preferred Stock is convertible at any time at the option of the holder into the number of shares of Common Stock ("Conversion Shares") calculated by dividing the Stated Value by the conversion price (the "Conversion Ratio"), subject to the limitations described below. In addition, upon Fresh Vine's stockholders approving the conversion of the Series D Preferred Stock into shares of Common Stock in accordance with the listing rules of the NYSE American LLC Company Guide, each share of Series D Preferred Stock will automatically convert into a number of shares of Common Stock equal to the Conversion Ratio. The conversion price is equal to $0.80 per share and is subject to standard weighted average anti-dilution protection.

Each holder of Series D Preferred Stock is prohibited from converting shares of Series D Preferred Stock if, after giving effect to the issuance of such Conversion Shares, such holder together with the holder's affiliates would beneficially own more than 4.99% of the outstanding Common Stock (the "Beneficial Ownership Limitation"). A holder of Series D Preferred Stock may increase such Beneficial Ownership Limitation to 9.99% upon notice to Fresh Vine.

Voting. The Series D Preferred Stock will vote with the Common Stock as a single class on an as-converted basis on all matters submitted to a vote of stockholders of Fresh Vine (taking into account the conversion limitations resulting from the Exchange Share Cap and the Individual Holder Share Cap as described below). However, the Series D Preferred Stock is not entitled to vote on any proposal to approve the issuance of shares of Common Stock upon the conversion of Series D Preferred Stock in excess of the Exchange Share Cap or the Individual Holder Share Cap, in each case as required by NYSE American rules. In addition, solely for purposes of determining voting rights (and not the Conversion Ratio), the conversion price will be equal to the most recent closing sale price of the Common Stock as of the date of entering into the Merger Agreement pursuant to which such share of Series D Preferred Stock was initially issued.

Exchange Share Cap and Individual Holder Share Cap. The holder's ability to convert Series D Preferred Stock will be subject to an "Exchange Share Cap" and an "Individual Holder Share Cap." Under the Exchange Share Cap, the total number of Conversion Shares issuable upon conversion of outstanding Series D Preferred Stock, when added to all Conversion Shares previously issued upon prior conversions of the Series D Preferred Stock, may not exceed 19.9% of Fresh Vine's issued and outstanding Common Stock as of the date of the Merger Agreement. Under the Individual Holder Share Cap, the holder of Series D Preferred Stock may not acquire Conversion Shares upon conversion of the Series D Preferred Stock if the total number of shares of Common Stock issuable to the converting holder would result in such holder beneficially owning in excess of 19.9% of the number of shares of Common Stock outstanding immediately after giving effect to the issuance. The Exchange Share Cap and the Individual Holder Share Cap will not apply if Fresh Vine obtains stockholder approval to issue the shares of Common Stock in excess of the applicable cap as required by NYSE American LLC Company Guide Section 713.

Merger Warrants

The Merger Warrants are exercisable on or after the date on which Fresh Vine stockholder's approve the conversion of the Series D Preferred Stock into shares of Common Stock in accordance with the listing rules of the NYSE American LLC Company Guide (the "Stockholder Approval Date"). The exercise price is $0.80 per share and is subject to standard weighted average anti-dilution protection. The Merger Warrants may not be exercised on a cashless basis. The Merger Warrants will expire on the earlier of (x) 5th

anniversary of the Stockholder Approval Date and (y) the date fixed for the redemption of the Merger Warrants. A holder of the Merger Warrant (together with the holder's affiliates) may not exercise any portion of the Merger Warrant to the extent that the holder would own more than 9.99% of the outstanding shares of Common Stock immediately after exercise. Fresh Vine may not issue any shares of Common Stock upon exercise of the Merger Warrant to the extent the issuance of such shares would exceed the Exchange Share Cap (as defined in the Certificate). The Merger Warrants are redeemable by Fresh Vine at a redemption price of $0.01 per share, upon 30 days' notice, if at any time after 180 days following the issuance date, the volume weighted average price of the Common Stock for any 20 consecutive trading days is equal to or greater than $1.60 per share.

The foregoing description of the Merger Agreement, the Certificate and the Merger Warrant are qualified in their entirety by the full text of the Merger Agreement, the Certificate and Merger Warrant, which are filed as Exhibits 10.1, 3.1 and 10.2, respectively, and are incorporated herein by reference.

Stockholder Support Agreement and Lock-Up Agreement

Concurrently with the execution of the Merger Agreement, officers, directors and certain stockholders of Fresh Vine entered into stockholder support agreements (each, a "Support Agreement") with Fresh Vine and Amaze to vote all of their respective shares of Fresh Vine capital stock, among other things, (a) in favor of the issuance of shares of Common Stock in excess of the "Exchange Share Cap" and "Individual Holder Share Cap" limitations upon conversion of the Series D Preferred Stock and upon exercise of the Merger Warrants; (b) for the election of the Fresh Vine director nominees, and (c) against any action, proposal, transaction, or agreement that could reasonably be expected to impede, interfere with, delay, discourage, adversely affect, or inhibit the elimination of the "Exchange Share Cap" and "Individual Holder Share Cap" limitations and/or fulfillment of Fresh Vine's obligations under the Merger Agreement with respect to the issuance of Common Stock upon conversion of the Series D Preferred Stock and/or exercise of the Merger Warrants.

In addition, concurrently with the execution of the Merger Agreement, officers and directors of Fresh Vine entered into lock-up agreements (each, a "Lock-Up Agreement") pursuant to which, subject to specified exceptions, they agreed not to transfer their shares of Common Stock for a period beginning on the date of the Merger Agreement and ending on the earlier of (x) the six (6) month anniversary of the closing, and (y) the first date after the closing on which the last sale price of Common Stock equals or exceeds $2.00 per share (as adjusted for share splits, share capitalizations, share consolidations, rights issuances, subdivisions, reorganizations, recapitalizations and the like) for any 20 trading days within any 30 trading day period commencing at least 150 days after the closing.

The foregoing description of the Support Agreement and Lock-Up Agreement do not purport to be complete and are qualified in their entirety by reference to the full text of the form of Support Agreement and form of Lock-Up Agreement, which are filed as Exhibit 10.3 and 10.4, respectively, and are incorporated herein by reference.

Item 1.02 Termination of a Material Definitive Agreement.

As previously disclosed, on November 3, 2024, Fresh Vine entered into entered into a Business Combination Agreement (the "Business Combination Agreement") with (i) Amaze Holdings Inc., a Delaware corporation and wholly owned subsidiary of Vine ("Pubco"), (ii) VINE Merger Sub Inc., a Delaware corporation and wholly subsidiary of Pubco ("VINE Merger Sub"), (iii) Adifex Merger Sub LLC, a Delaware limited liability company and wholly owned subsidiary of Pubco ("Adifex Merger Sub"), and (iv) Adifex Holdings LLC, a Delaware limited liability company ("Adifex").

On March 7, 2025, Fresh Vine and Adifex entered into a Termination Agreement (the "Termination Agreement") pursuant to which the parties mutually agreed to terminate the Business Combination Agreement effective immediately upon execution of the Termination Agreement. No termination fees are payable by either party in connection with the termination of the Business Combination Agreement.

The foregoing description of the Termination Agreement does not purport to be complete and is qualified in its entirety by the full text of the Termination Agreement, which is filed as Exhibit 10.5 and incorporated by reference herein.]

Item 2.01 Completion of Acquisition or Disposition of Assets.

The information set forth under "Agreement and Plan of Merger" in Item 1.01 is incorporated herein by reference.

Item 3.02 Unregistered Sales of Equity Securities.

The information set forth in Item 1.01 is incorporated herein by reference. The shares of Series D Preferred Stock, the Merger Warrants and the shares of Common Stock issuable upon conversion or exercise of the Series D Preferred Stock and Merger Warrants, as applicable, were offered and sold in reliance upon exemptions from registration pursuant to Section 4(a)(2) under the Securities Act of 1933, as amended, and/or Rule 506(b) of Regulation D promulgated thereunder, as transactions by an issuer not involving any public offering.

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

Effective March 7, 2025, pursuant to the Merger Agreement, Fresh Vine's board of directors expanded the size of the board from 4 to 5 directors and filled the newly created vacancy by appointing Aaron Day, the Chief Executive Officer of Amaze, to serve on the board. Mr. Day's term will expire at Fresh Vine's next annual meeting of stockholders or until his earlier resignation or removal. At the time of this Current Report on Form 8-K, the board has not yet determined board committee assignments for Mr. Day.

Other than as provided for in the Merger Agreement, there are no arrangements or understandings between Mr. Day and any other person pursuant to which he was selected as a director.

Since the beginning of the last fiscal year, there have been no related party transactions between Fresh Vine and Mr. Day that would be reportable under Item 404(a) of Regulation S-K.

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Years.

The information set forth under "Series D Preferred Stock" in Item 1.01 is incorporated herein by reference.

Effective upon entry into the Merger Agreement, Fresh Vine's board of directors adopted an amendment to Fresh Vine's bylaws. The amendment inserts a new Article XI that states that the "Acquisition of Controlling Interest" statutes set forth in Sections 78.378 through 78.3793, inclusive, of the Nevada Revised Statutes shall not apply to any "acquisition" of a "controlling interest" (as each term is defined therein) in Fresh Vine resulting from the Merger Agreement. The foregoing description of the amendment to Fresh Vine's bylaws is qualified in its entirety by reference to Amendment No. 2 to Bylaws, which is filed as Exhibit 3.2, and is incorporated herein by reference.

Item 7.01 Regulation FD Disclosure.

On March 10, 2025, Fresh Vine issued a press release announcing the Merger and the termination of the Business Combination Agreement. The press release is furnished as Exhibit 99.1 to this Current Report on Form 8-K and incorporated by reference, except that the information contained on any websites referenced in the press release is not incorporated by reference.

The information furnished in this Item 7.01 and Exhibit 99.1 attached shall not be deemed to be “filed” for the purposes of Section 18 of the Securities and Exchange Act of 1934, as amended (the “Exchange Act”), or otherwise subject to the liabilities of such section, nor shall such information be deemed incorporated by reference into any filing under the Securities Act of 1933, as amended, or the Exchange Act, except as shall be expressly set forth by specific reference in such a filing.

Item 9.01 Financial Statements and Exhibits.

(a) Financial Statements of Business Acquired.

The audited consolidated financial statements of Amaze as of and for the years ended December 31, 2023 and 2022 and unaudited consolidated financial statements of Amaze for the nine months ended September 30, 2024 and 2023 are attached as Exhibits 99.2 and 99.3, respectively, and incorporated herein by reference.

The audited consolidated financial statements of Amaze as of and for the year ended December 31, 2024 will be filed by amendment to this Current Report on Form 8-K no later than 71 calendar days after the date on which this Current Report on Form 8-K is required to be filed.

(b) Pro Forma Financial Information.

The pro forma financial information required to be filed under Item 9.01(b) of this Current Report on Form 8-K will be filed by amendment to this Current Report on Form 8-K no later than 71 calendar days after the date on which this Current Report on Form 8-K is required to be filed.

(d) Exhibits.

Exhibit No.	Description
3.1	Certificate of Designation of Preferences, Rights, and Limitations of Series D Convertible Preferred Stock
3.2	Amendment No. 2 to Bylaws
10.1	Amended and Restated Agreement and Plan of Merger dated as of March 7, 2025 by and among Fresh Vine Wine, Inc., Amaze Holdings, Inc., Amaze Software, Inc. (“Amaze”), the Stockholders of Amaze listed on Schedule I and signatory thereto, and Aaron Day, solely in his capacity as the Holders’ Representative
10.2	Form of Merger Warrant
10.3	Form of Stockholder Support Agreement
10.4	Form of Lock-Up Agreement
10.5	Termination Agreement dated as of March 7, 2025 by and between Fresh Vine Wine, Inc. and Adifex Holdings LLC
99.1	Press Release dated March 10, 2025
99.2	Audited consolidated financial statements of Amaze Software, Inc. as of and for the years ended December 31, 2023 and 2022
99.3	Unaudited consolidated financial statements of Amaze Software, Inc. as of and for the nine months ended September 30, 2024 and 2023
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

SIGNATURE

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.

FRESH VINE WINE, INC.

Date: March 10, 2025

By: /s/ Michael Pruitt
Michael Pruitt
Chairman and Chief Executive Officer

Exhibit 3.1

FRESH VINE WINE, INC.
CERTIFICATE OF DESIGNATION OF PREFERENCES,
RIGHTS AND LIMITATIONS
OF
SERIES D CONVERTIBLE PREFERRED STOCK

PURSUANT TO THE
NEVADA REVISED STATUTES

The undersigned, Michael Pruitt, does hereby certify that:

1. He is the Chief Executive Officer of Fresh Vine Wine, Inc., a Nevada corporation (the "**Corporation**").

2. The Corporation is authorized to issue 25,000,000 shares of preferred stock.

3. The following resolutions were duly adopted by the board of directors of the Corporation (the "**Board of Directors**"):

WHEREAS, the Articles of Incorporation of the Corporation (the "**Articles of Incorporation**") authorize the issuance of up to 25,000,000 shares of preferred stock, par value $0.001 per share, of the Corporation in one or more series, the shares of each series to have such voting powers, and such designations, preferences and relative, participating, optional or other special rights and qualifications, limitations or restrictions as are specified in resolutions adopted by the Board of Directors providing for the issue thereof.

WHEREAS, it is the desire of the Board of Directors to establish and fix the number of shares to be included in a new series of Preferred Stock, entitled "Series D Convertible Preferred Stock," and the designation, rights, preferences, and limitations of the shares of such new series.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors does hereby provide for the issuance of a series of Preferred Stock entitled "**Series D Convertible Preferred Stock**," and does hereby in this Certificate of Designation (this "**Certificate of Designation**") establish and fix and herein state and express the designation, rights, preferences, powers, restrictions, and limitations of such series of Preferred Stock as set forth below:

TERMS OF PREFERRED STOCK

Section 1. **Definitions**. For the purposes hereof, the following terms shall have the following meanings:

"**Affiliate**" means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 405 of the Securities Act.

"**Alternate Consideration**" shall have the meaning set forth in Section 7(e).

"**Beneficial Ownership Limitation**" shall have the meaning set forth in Section 6(d).

"**Business Day**" means any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

"**Buy-In**" shall have the meaning set forth in Section 6(c)(iv).

"**Commission**" means the United States Securities and Exchange Commission.

"**Common Stock**" means the Corporation's common stock, par value $0.001 per share, and stock of any other class of securities into which such securities may hereafter be reclassified or changed.

"**Common Stock Equivalents**" means any securities of the Corporation or its subsidiaries which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, rights, options, warrants or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

"**Conversion Amount**" means the sum of the Stated Value of shares of Preferred Stock at issue.

"**Conversion Date**" shall have the meaning set forth in Section 6(a).

"**Conversion Price**" means $0.80.

"**Conversion Shares**" means, collectively, the shares of Common Stock issuable upon conversion of the shares of Preferred Stock in accordance with the terms hereof.

"Exchange Share Cap" shall have the meaning set forth in Section 5(e)(i).

"Excess Conversion Shares" shall have the meaning set forth in Section 5(e)(i).

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"**Fundamental Transaction**" shall have the meaning set forth in Section 7(e).

"**Holder**" shall have the meaning given such term in Section 2.

“**Individual Holder Share Cap**” shall have the meaning set forth in Section 5(e)(ii).

“**Individual Excess Conversion Shares**” shall have the meaning set forth in Section 5(e)(ii).

“**Junior Securities**” means the Common Stock and any other class or series of capital stock of the Corporation other than those securities which are explicitly senior or pari passu to the Preferred Stock liquidation preference.

“**Market Price**” means the closing sale price of the Common Stock on the Trading Market on the applicable date.

“**Notice of Conversion**” shall have the meaning set forth in Section 6(a).

“**Original Issue Date**” means the date of the first issuance of any shares of the Preferred Stock regardless of the number of transfers of any particular shares of Preferred Stock and regardless of the number of certificates which may be issued to evidence such Preferred Stock.

“**Parity Securities**” means any class or series of capital stock of the Corporation hereinafter created that expressly ranks pari passu with the Preferred Stock in liquidation preference.

“**Person**” means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

“**Preferred Shares**” means share of Preferred Stock.

“**Preferred Stock**” shall have the meaning set forth in Section 2.

“**Securities Act**” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“**Merger Agreement**” means the Amended and Restated Agreement and Plan of Merger dated as of March 7, 2025 by and among the Corporation, Amaze Holdings, Inc., a Delaware corporation and wholly owned subsidiary of the Corporation (“Merger Sub”), and Amaze Software, Inc., a Delaware corporation (“Amaze”).

“**Senior Securities**” means the Series A Convertible Preferred Stock, Series B Convertible Preferred Stock and any other class or series of capital stock of the Corporation hereinafter created that expressly ranks senior to the Preferred Stock in liquidation preference.

“**Share Delivery Date**” shall have the meaning set forth in Section 6(c).

“**Stated Value**” shall have the meaning set forth in Section 2.

“**Successor Entity**” shall have the meaning set forth in Section 7(e).

“**Trading Day**” means a day on which the principal Trading Market is open for business.

“**Trading Market**” means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE, NYSE American, Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, (or any successors to any of the foregoing).

Section 2. **Designation, Amount and Par Value**. The series of preferred stock shall be designated as its Series D Convertible Preferred Stock (the “**Preferred Stock**”) and the number of shares so designated shall be up to 750,000 (which shall not be subject to increase without the written consent of the holders of at least a majority of the outstanding Preferred Shares (each, a “**Holder**” and collectively, the “**Holders**”)). Each share of Preferred Stock shall have a par value of $0.001 per share and a stated value equal to $100.00 (the “**Stated Value”).**

Section 3. Dividends. Except for stock dividends or distributions for which adjustments are to be made pursuant to Section 7, Holders shall be entitled to receive, and the Corporation shall pay, dividends on shares of Preferred Stock equal (on an as-if-converted-to-Common-Stock basis) to and in the same form as dividends actually paid on shares of the Common Stock when, as and if such dividends are paid on shares of the Common Stock. No other dividends shall be paid on shares of Preferred Stock.

Section 4. Voting Rights. Except as otherwise provided herein or as otherwise required by law, the Holders of Preferred Stock shall vote as a single class with the holders of the Common Stock (and any other class or series of capital stock of the Corporation that votes as a single class with the holders of the Common Stock) on an “as converted” basis on all matters submitted to a vote of stockholders of the Corporation (taking into account, for the avoidance of doubt, the conversion restrictions in paragraphs 6(e) resulting from the Exchange Share Cap and the Individual Holder Share Cap, if and as applicable); provided, however, that (i) the Preferred Stock is not entitled to vote on any proposal to approve the issuance of Common Stock pursuant to this Certificate of Designation in excess of the Exchange Share Cap or the Individual Holder Share Cap, in each case as required by the NYSE American LLC Company Guide (it being further acknowledged that Conversion Shares outstanding on the record date for such approval, if any, will not be taken into account in tabulating the results of such vote), and (ii) solely for purposes of determining the voting rights of the Holders of Preferred Stock under this Section 4 (and not for purposes of determining the actual Conversion Ratio under Section 6), the Conversion Price with respect to each share of Preferred Stock shall be equal to the most recent closing sale price of the Common Stock as of the date of entering into the Merger Agreement pursuant to which such share of Preferred Stock was initially issued by the Company. As long as any shares of Preferred Stock are outstanding, the Corporation shall not, without the affirmative vote of the Holders of at least a majority of the of the then-outstanding shares of the Preferred Stock, (a) alter, amend or repeal this Certificate of Designation, (b) increase the number of authorized shares of Preferred Stock, or (c) enter into any agreement with respect to any of the foregoing.

Section 5. Ranking; Liquidation.

(a) The Preferred Stock shall, with respect to distributions of assets and rights upon the occurrence of any liquidation, dissolution or winding-up of the Corporation (“**Liquidation**”), rank: (i) junior to the Senior Securities, if any; (ii) pari passu with the Parity Securities; and (iii) senior to the Junior Securities. Upon any Liquidation, after the satisfaction in full of the debts of the Corporation and payment of the liquidation preference to any Senior Securities, the Holders of Preferred Stock shall be entitled to be paid, on a pari passu basis with the payment of any liquidation preference afforded to holders of any Parity

Securities, for each share of Preferred Stock held thereby, out of (but only to the extent) the assets of the Corporation are legally available for distribution to its stockholders, an amount equal to the Stated Value (as adjusted for stock splits, stock dividends, combinations or other recapitalizations of the Preferred Stock), plus any accrued but unpaid dividends, before any distribution or payment shall be made to the holders of any Junior Securities. If the assets of the Corporation available for distribution to Holders of shares of Preferred Stock shall be insufficient to permit payment in full to such Holders of the sums which such Holders are entitled to receive in such case and of any liquidation preference afforded to holders of any Parity Securities, then all of the assets available for distribution to holders of the Preferred Stock and the Parity Securities shall be distributed among and paid to such holders ratably in proportion to the amounts that would be payable to such holders if such assets were sufficient to permit payment in full.

(b) After the Holders of all shares of Preferred Stock shall have been paid in full the amounts to which they are entitled pursuant to Section 5(a), the remaining assets of the Corporation available for distribution to its stockholders shall be distributed among the holders of shares of Series A Convertible Preferred Stock, holders of shares of Series B Convertible Preferred Stock, Holders of the shares of Preferred Stock and holders of Common Stock, pro rata based on the number of shares held by each such holder, treating for this purpose all such Series A Convertible Preferred Stock, Series B Convertible Preferred Stock and Preferred Stock as if they had been fully converted into Common Stock disregarding for such purposes any conversion limitations hereunder) pursuant to the terms of the Series A Certificate of Designations, the Series B Certificate of Designations and this Certificate of Designations, as applicable, each as in effect immediately prior to such Liquidation.

(c) All the preferential amounts to be paid to the Holders under this Section 5 shall be paid or set apart for payment before the payment or setting apart for payment of any amount for, or the distribution of any Liquidation funds of the Corporation to the holders of shares of Junior Stock in connection with a Liquidation as to which this Section 5 applies.

Section 6. Conversion.

(a) **Conversion at Option of Holder**. Each share of Preferred Stock shall be convertible, at any time and from time to time from and after the Original Issue Date at the option of the Holder thereof, into the number of shares of Common Stock calculated by dividing the Stated Value by the Conversion Price (the "**Conversion Ratio**") (subject to the limitations set forth in Section 6(d) and Section 6(e)). Holders shall effect conversions by providing the Corporation with the form of conversion notice attached hereto as ***Annex A*** (a "**Notice of Conversion**"). Each Notice of Conversion shall specify the number of shares of Preferred Stock to be converted, the number of shares of Preferred Stock owned prior to the conversion at issue, the number of shares of Preferred Stock owned subsequent to the conversion at issue and the date on which such conversion is to be effected, which date may not be prior to the date the applicable Holder delivers by facsimile such Notice of Conversion to the Corporation (such date, the "**Conversion Date**"). If no Conversion Date is specified in a Notice of Conversion, the Conversion Date shall be the date that such Notice of Conversion to the Corporation is deemed delivered hereunder. No ink-original Notice of Conversion shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Conversion form be required. The calculations and entries set forth in the Notice of Conversion shall control in the absence of manifest or mathematical error. To effect conversions of shares of Preferred Stock, a Holder shall not be required to surrender the certificate(s) representing the shares of Preferred Stock to the Corporation unless all of the shares of Preferred Stock represented thereby are so converted, in which case such Holder shall deliver the certificate representing such shares of Preferred Stock promptly following the Conversion Date at issue. Shares of Preferred Stock converted into Common Stock or redeemed in accordance with the terms hereof shall be canceled and shall not be reissued.

(b) **Automatic Conversion on Stockholder Approval**. Effective immediately upon the Corporation's stockholders approving the conversion of the Preferred Stock into shares of Common Stock in accordance with the listing rules of the NYSE American LLC Company Guide (such approvals, collectively the "**Stockholder Approval**" and such date, the "**Automatic Conversion Deadline**"), each share of Preferred Stock then outstanding shall automatically convert into a number of shares of Common Stock equal to the Conversion Ratio (the "**Automatic Conversion**"). The Corporation shall (i) inform each Holder of the occurrence of the Stockholder Approval and (ii) confirm to each Holder the effective date of the Automatic Conversion, in each case, within one (1) Business Day following such Stockholder Approval. The shares of Preferred Stock that are converted in the Automatic Conversion are referred to as the "**Converted Stock**". The Conversion Shares shall be issued shall be automatically cancelled upon the Automatic Conversion and converted into the corresponding Conversion Shares, which shares shall be issued in book entry form and without any action on the part of the Holders and shall be delivered to the Holders within two (2) Trading Days of the effectiveness of the Automatic Conversion.

(c) **Mechanics of Conversion.**

i. **Delivery of Conversion Shares Upon Conversion**. Not later than two (2) Trading Days after each Conversion Date (the "**Share Delivery Date**"), the Corporation shall deliver, or cause to be delivered, to the converting Holder the number of Conversion Shares being acquired upon the conversion of the Preferred Stock, which Converting Shares shall be issued in book-entry form. The Corporation shall deliver the Conversion Shares electronically through the Depository Trust Company or another established clearing corporation performing similar functions..

ii. **Failure to Deliver Conversion Shares**. If, in the case of any Notice of Conversion, such Conversion Shares are not delivered to or as directed by the applicable Holder by the Share Delivery Date, the Holder shall be entitled to elect by written notice to the Corporation at any time on or before its receipt of such Conversion Shares, to rescind such Conversion, in which event the Corporation shall promptly return to the Holder any original Preferred Stock certificate delivered to the Corporation and the Holder shall promptly return to the Corporation the Conversion Shares issued to such Holder pursuant to the rescinded Conversion Notice.

iii. **Obligation Absolute**. The Corporation's obligation to issue and deliver the Conversion Shares upon conversion of Preferred Stock in accordance with the terms hereof are absolute and unconditional, irrespective of any action or inaction by a Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by such Holder or any other Person of any obligation to the Corporation or any violation or alleged violation of law by such Holder or any other person, and irrespective of any other circumstance which might otherwise limit such obligation of the Corporation to such Holder in connection with the issuance of such Conversion Shares; provided, however, that such delivery shall not operate as a waiver by the Corporation of any such action that the Corporation may have against such Holder.

iv. **[Reserved.]**

v. **Reservation of Shares Issuable Upon Conversion**. The Corporation covenants that it will at all times reserve and keep available out of its authorized and unissued shares of Common Stock for the sole purpose of issuance upon conversion of the Preferred Stock and payment of dividends on the Preferred Stock, each as herein provided, free from preemptive rights or any other actual contingent purchase rights of Persons other than the Holder (and the other holders of the Preferred Stock), not less than such aggregate number of shares of the Common Stock as shall be issuable (taking into account the adjustments and restrictions of Section 7) upon the conversion of the then outstanding shares of Preferred Stock; provided,

however, if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Preferred Stock, the Corporation shall take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in reasonable best efforts to obtain the requisite stockholder approval of any necessary amendment to the Articles of Incorporation. The Corporation covenants that all shares of Common Stock that shall be so issuable shall, upon issue, be duly authorized, validly issued, fully paid and nonassessable.

vi. **Fractional Shares**. No fractional shares or scrip representing fractional shares shall be issued upon the conversion of the Preferred Stock. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such conversion, the Corporation shall round up to the next whole share.

vii. **Transfer Taxes and Expenses**. The issuance of Conversion Shares on conversion of this Preferred Stock shall be made without charge to any Holder for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such Conversion Shares, provided that the Corporation shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such Conversion Shares upon conversion in a name other than that of the Holders of such shares of Preferred Stock and the Corporation shall not be required to issue or deliver such Conversion Shares unless or until the Person or Persons requesting the issuance thereof shall have paid to the Corporation the amount of such tax or shall have established to the satisfaction of the Corporation that such tax has been paid. The Corporation shall pay all transfer agent fees required for same-day processing of any Notice of Conversion and all fees to the Depository Trust Company (or another established clearing corporation performing similar functions) required for same-day electronic delivery of the Conversion Shares.

(d) **Beneficial Ownership Limitation**. The Corporation shall not effect any conversion of the Preferred Stock, and a Holder shall not have the right to convert any portion of the Preferred Stock, to the extent that, after giving effect to the conversion set forth on the applicable Notice of Conversion, such Holder (together with such Holder's Affiliates, and any Persons acting as a group together with such Holder or any of such Holder's Affiliates (such Persons, "**Attribution Parties**")) would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by such Holder and its Affiliates and Attribution Parties shall include the number of shares of Common Stock issuable upon conversion of the Preferred Stock with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which are issuable upon (i) conversion of the remaining, unconverted Preferred Stock beneficially owned by such Holder or any of its Affiliates or Attribution Parties and (ii) exercise or conversion of the unexercised or unconverted portion of any other securities of the Corporation (including, without limitation, any other Common Stock Equivalents)]subject to a limitation on conversion or exercise analogous to the limitation contained herein (including, without limitation, the Preferred Stock) beneficially owned by such Holder or any of its Affiliates or Attribution Parties. Except as set forth in the preceding sentence, for purposes of this Section 6(d), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. To the extent that the limitation contained in this Section 6(d) applies, the determination of whether the Preferred Stock is convertible (in relation to other securities owned by such Holder together with any Affiliates and Attribution Parties) and of how many shares of Preferred Stock are convertible shall be in the sole discretion of such Holder, and the submission of a Notice of Conversion shall be deemed to be such Holder's determination of whether the shares of Preferred Stock may be converted (in relation to other securities owned by such Holder together with any Affiliates and Attribution Parties) and how many shares of the Preferred Stock are convertible, in each case subject to the Beneficial Ownership Limitation. In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this Section 6(d), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as stated in the most recent of the following: (i) the Corporation's most recent periodic or annual report filed with the Commission, as the case may be, (ii) a more recent public announcement by the Corporation or (iii) a more recent written notice by the Corporation or the Corporation's transfer agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request (which may be via email) of a Holder, the Corporation shall within two Trading Days confirm orally and in writing to such Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Corporation, including the Preferred Stock, by such Holder or its Affiliates or Attribution Parties since the date as of which such number of outstanding shares of Common Stock was reported. The "**Beneficial Ownership Limitation**" shall be 4.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon conversion of Preferred Stock held by the applicable Holder. A Holder, upon notice to the Corporation, may increase or decrease the Beneficial Ownership Limitation in this Section 6(d), provided that the Beneficial Ownership Limitation in no event exceeds 9.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock upon exercise of this Preferred Stock held by the Holder and the provisions of this Section 6(d) shall continue to apply. Any increase in the Beneficial Ownership Limitation will not be effective until the 61st day after such notice is delivered to the Corporation. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 6(d) to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation contained herein or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitations contained in this paragraph shall apply to a successor holder of Preferred Stock.

(e) **Compliance with Securities Laws and Principal Market Rules**.

i. **Exchange Share Cap**. Notwithstanding anything in this Certificate of Designation to the contrary, if on any Conversion Date, the total number of Conversion Shares issuable upon any conversion of outstanding shares of Preferred Stock, when added to all Conversion Shares previously issued upon prior conversions of Preferred Stock (if any) previously issued under Section 3 hereof, exceeds 19.9% of the Corporation's issued and outstanding Common Stock as of the date of the Merger Agreement (the "**Exchange Share Cap**") (such excess, the "**Excess Conversion Shares**"), then (i) only shares of Preferred Stock will be converted that results in the issuance of Conversion Shares that does not exceed the Exchange Share Cap (rounded down to the nearest whole share). The limitation in this Section 6(e)(i) will not apply if the Corporation obtains stockholder approval to issue the Excess Conversion Shares as required by the NYSE American LLC Company Guide, provided that such approval is in accordance with NYSE Company Guide Section 713 (or its successor).

ii. **Individual Holder Share Cap**. Notwithstanding anything in this Certificate of Designation to the contrary, no Holder shall have the right to acquire Conversion Shares upon conversion of Preferred Stock, and the Corporation shall not be required or permitted to issue Conversion Shares to such Holder, in excess of such Holder's Individual Holder Share Cap. If on any Conversion Date, the total number of Conversion Shares issuable to a converting Holder would result in such Holder beneficially owning in excess of 19.9% of the number of shares of Common Stock outstanding immediately after giving effect to the issuance of such Conversion Shares (the "**Individual Holder Share Cap**") (such excess, the "**Individual Excess Conversion Shares**"), then only shares of Preferred Stock will be converted that results in the issuance of Conversion Shares that that will not result in such Holder exceeding the applicable Individual Holder Share Cap. The limitation in this Section 6(e)(ii) will not apply if the Corporation obtains stockholder approval to issue the Excess Conversion Shares as required by the NYSE American LLC Company Guide, provided that such approval is in accordance with NYSE Company Guide Section 713 (or its successor). If the conversion limitation contained in this Section 6(e)(ii) applies, the determination of whether and the extent to which such limitation applies to a particular Holder shall be in the discretion of such

Holder, and the delivery of a Notice of Conversion shall be deemed to be the Holder's determination of the extent to which such Holder's Preferred Stock may be converted. For purposes of this this Section 6(e)(ii), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as reflected in (A) the Corporation's most recent periodic or annual report filed with the Securities and Exchange Commission, as the case may be, (B) a more recent public announcement by the Corporation or (C) a more recent written notice by the Corporation or its transfer agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request of a Holder, the Corporation shall promptly confirm orally and in writing to the Holder the number of shares of Common Stock then outstanding.

Section 7. Certain Adjustments.

(a) **Stock Dividends and Stock Splits**. If the Corporation, at any time while the Preferred Stock is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions payable in shares of Common Stock on shares of Common Stock or any other Common Stock Equivalents (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Corporation upon conversion of, or payment of a dividend on, this Preferred Stock); (ii) subdivides outstanding shares of Common Stock into a larger number of shares; (iii) combines (including by way of a reverse stock split) outstanding shares of Common Stock into a smaller number of shares; or (iv) issues, in the event of a reclassification of shares of the Common Stock, any shares of capital stock of the Corporation, then the Conversion Ratio shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding any treasury shares of the Corporation) outstanding immediately before such event, and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event. Any adjustment made pursuant to this Section 7(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or reclassification.

(b) **Adjustments to Preferred Stock Conversion Price for Diluting Issues**.

i. **Special Definitions**. For purposes of this Section 7, the following definitions shall apply:

(A) "**Additional Shares of Common Stock**" means all shares of Common Stock issued (or, pursuant to Section 7(b)(iii) below, deemed to be issued) by the Corporation after the Original Issue Date (as defined below), other than the following shares of Common Stock and shares of Common Stock deemed issued pursuant to the following Options and Convertible Securities (collectively, "**Exempted Securities**"):

(1) as to any class or series of Preferred Stock, shares of Common Stock, Options or Convertible Securities issued as a dividend or distribution on such class or series of Preferred Stock (including dividends payable in connection with dividends on other classes or series of stock);

(2) shares of Common Stock, Options or Convertible Securities issued by reason of a dividend, stock split, split-up or other distribution on shares of Common Stock that is covered by Sections 7(a), 7(c), 7(d) and 7(e);

(3) shares of Common Stock, Options or Convertible Securities issued to banks, equipment lessors or other financial institutions, or to real property lessors, pursuant to a debt financing, equipment leasing or real property leasing transaction approved by the Board of Directors;

(4) shares of Common Stock or Options issued to employees or directors of, or consultants or advisors to, the Corporation or any of its subsidiaries pursuant to a plan, agreement or arrangement approved (i) prior to the Original Issue Date or (ii) by the Board of Directors

(5) shares of Common Stock or Convertible Securities actually issued upon the exercise of Options or shares of Common Stock actually issued upon the conversion or exchange of Convertible Securities, in each case provided such issuance is pursuant to the terms of such Option or Convertible Security;

(6) shares of Common Stock, Options or Convertible Securities issued to suppliers or third party service providers in connection with the provision of goods or services pursuant to transactions approved by the Board of Directors;

(7) shares of Common Stock, Options or Convertible Securities issued as acquisition consideration pursuant to the acquisition of another corporation by the Corporation by merger, purchase of substantially all of the assets or other reorganization or to a joint venture agreement, provided that such issuances are approved by the Board of Directors; or

(8) shares of Common Stock, Options or Convertible Securities issued in connection with sponsored research, collaboration, technology license, development, OEM, marketing or other similar agreements or strategic partnerships approved by the Board of Directors; or

(9) shares of Common Stock, Options or Convertible Securities issued for capital-raising purposes in connection with the transactions contemplated by the Merger Agreement, as approved by the Board of Directors, including without limitation issuances of any new class or series of preferred stock of the Corporation in a PIPE transaction .

(B) "**Convertible Securities**" means any evidences of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for Common Stock, but excluding Options.

(C) "**Option**" means any rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities.

ii**.** **No Adjustment of Preferred Stock Conversion Price**. No adjustment in the Conversion Price of the Preferred Stock shall be made as the result of the issuance or deemed issuance of Additional Shares of Common Stock if the Corporation receives written notice from the holders of a majority of the then outstanding shares of such Preferred Stock, agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common Stock.

iii. **Deemed Issue of Additional Shares of Common Stock**.

(A) If the Corporation at any time or from time to time after the Original Issue Date shall issue any Options or Convertible Securities (excluding Options or Convertible Securities which are themselves Exempted Securities) or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares of Common Stock (as set forth in the instrument relating thereto, assuming the satisfaction of any conditions to exercisability, convertibility or exchangeability but without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date.

(B) If the terms of any Option or Convertible Security, the issuance of which resulted in an adjustment to the Conversion Price of the Preferred Stock pursuant to the terms of Section 7(b)(iv), are revised as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such Option or Convertible Security) to provide for either (1) any increase or decrease in the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any such Option or Convertible Security or (2) any increase or decrease in the consideration payable to the Corporation upon such exercise, conversion and/or exchange, then, effective upon such increase or decrease becoming effective, the Conversion Price of such Preferred Stock computed upon the original issue of such Option or Convertible Security (or upon the occurrence of a record date with respect thereto) shall be readjusted to such Conversion Price for such Preferred Stock as would have obtained had such revised terms been in effect upon the original date of issuance of such Option or Convertible Security. Notwithstanding the foregoing, no readjustment pursuant to this Section 7(b)(iii) shall have the effect of increasing the Conversion Price applicable to the Preferred Stock to an amount which exceeds the lower of (i) the Conversion Price for such Preferred Stock in effect immediately prior to the original adjustment made as a result of the issuance of such Option or Convertible Security, or (ii) the Conversion Price for such Preferred Stock that would have resulted from any issuances of Additional Shares of Common Stock (other than deemed issuances of Additional Shares of Common Stock as a result of the issuance of such Option or Convertible Security) between the original adjustment date and such readjustment date.

(C) If the terms of any Option or Convertible Security (excluding Options or Convertible Securities which are themselves Exempted Securities), the issuance of which did not result in an adjustment to the Conversion Price of the Preferred Stock pursuant to the terms of Section 7(b)(iv) (either because the consideration per share (determined pursuant to Section 7(b)(v)) of the Additional Shares of Common Stock subject thereto was equal to or greater than the applicable Conversion Price then in effect, or because such Option or Convertible Security was issued before the Original Issue Date), are revised after the Original Issue Date as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such Option or Convertible Security) to provide for either (1) any increase in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible Security or (2) any decrease in the consideration payable to the Corporation upon such exercise, conversion or exchange, then such Option or Convertible Security, as so amended or adjusted, and the Additional Shares of Common Stock subject thereto determined in the manner provided in Section7(b)(iii)(A) shall be deemed to have been issued effective upon such increase or decrease becoming effective.

(D) Upon the expiration or termination of any unexercised Option or unconverted or unexchanged Convertible Security (or portion thereof) which resulted (either upon its original issuance or upon a revision of its terms) in an adjustment to the Conversion Price of the Preferred Stock pursuant to the terms of Section 7(b)(iv), the Conversion Price of such Preferred Stock shall be readjusted to such Conversion Price for such Preferred Stock as would have obtained had such Option or Convertible Security (or portion thereof) never been issued.

(E) If the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any Option or Convertible Security, or the consideration payable to the Corporation upon such exercise, conversion and/or exchange, is calculable at the time such Option or Convertible Security is issued or amended but is potentially subject to adjustment based upon subsequent events, any adjustment to the Conversion Price of the Preferred Stock provided for in this Section 7(b)(iii) shall be effected at the time of such issuance or amendment based on such number of shares or amount of consideration without regard to any provisions for subsequent adjustments (and any subsequent adjustments shall be treated as provided in clauses (B) and (C) of this Section 7(b)(iii)). If the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any Option or Convertible Security, or the consideration payable to the Corporation upon such exercise, conversion and/or exchange, cannot be calculated at all at the time such Option or Convertible Security is issued or amended, any adjustment to the Conversion Price of the Preferred Stock that would result under the terms of this Section 7(b)(iii) at the time of such issuance or amendment shall instead be effected at the time such number of shares and/or amount of consideration is first calculable (even if subject to subsequent adjustments), assuming for purposes of calculating such adjustment to the Conversion Price for such Preferred Stock that such issuance or amendment took place at the time such calculation can first be made. In the event an Option or Convertible Security contains alternative conversion terms, such as a cap on the valuation of the Corporation at which such conversion will be effected, or circumstances where the Option or Convertible Security may be repaid in lieu of conversion, then the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of such Option or Convertible Security shall be deemed not calculable until such time as the applicable conversion terms are determined.

iv. **Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock**. In the event the Corporation shall at any time after the Original Issue Date issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 7(b)(iii)), without consideration or for a consideration per share less than the Conversion Price of the Preferred Stock in effect immediately prior to such issuance or deemed issuance, then the Conversion Price for such Preferred Stock shall be reduced, concurrently with such issue, to a price (calculated to the nearest one-hundredth of a cent) determined in accordance with the following formula:

$CP2 = CP1 * (A + B) / (A + C)$.

For purposes of the foregoing formula, the following definitions shall apply:

"CP2" shall mean the Conversion Price of the Preferred Stock in effect immediately after such issuance or deemed issuance of Additional Shares of Common Stock.

"CP1" shall mean the Conversion Price of the Preferred Stock in effect immediately prior to such issuance or deemed issuance of Additional Shares of Common Stock;

"A" shall mean the number of shares of Common Stock outstanding immediately prior to such issuance or deemed issuance of Additional Shares of Common Stock (treating for this purpose as outstanding all shares of Common Stock issuable upon exercise of Options outstanding immediately prior to such issuance or deemed issuance or upon conversion or exchange of Convertible Securities (including the Preferred Stock) outstanding (assuming exercise of any outstanding Options therefor) immediately prior to such issue);

"B" shall mean the number of shares of Common Stock that would have been issued if such Additional Shares of Common Stock had been issued or deemed issued at a price per share equal to CP1 (determined by dividing the aggregate consideration received by the Corporation in respect of such issue by CP1); and

"C" shall mean the number of such Additional Shares of Common Stock issued in such transaction.

v. **Determination of Consideration**. For purposes of this Section 7(b), the consideration received by the Corporation for the issuance or deemed issuance of any Additional Shares of Common Stock shall be computed as follows:

(A) **Cash and Property**. Such consideration shall:

(1) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation, excluding amounts paid or payable for accrued interest;

(2) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors; and

(3) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (i) and (ii) above, as determined in good faith by the Board of Directors.

(B) **Options and Convertible Securities**. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section 7(b)(iii), relating to Options and Convertible Securities, shall be determined by dividing:

(1) The total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by

(2) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities.

vi. **Multiple Closing Dates**. In the event the Corporation shall issue on more than one date Additional Shares of Common Stock that are a part of one transaction or a series of related transactions and that would result in an adjustment to the Conversion Price of the Preferred Stock pursuant to the terms of Section 7(b)(iv), and such issuance dates occur within a period of no more than 180 days from the first such issuance to the final such issuance, then, upon the final such issuance, the Conversion Price for the Preferred Stock shall be readjusted to give effect to all such issuances as if they occurred on the date of the first such issuance (and without giving effect to any additional adjustments as a result of any such subsequent issuances within such period).

(c) **Subsequent Rights Offerings**. In addition to any adjustments pursuant to Section 7(a) above, if at any time the Corporation grants, issues or sells any Common Stock Equivalents or rights to purchase stock, warrants, securities or other property pro rata to all of the record holders of any class of shares of Common Stock (the "**Purchase Rights**"), then the Holder of will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of such Holder's Preferred Stock (without regard to any limitations on exercise hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights (provided, however, to the extent that the Holder's right to participate in any such Purchase Right would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Purchase Right to such extent (or beneficial ownership of such shares of Common Stock as a result of such Purchase Right to such extent) and such Purchase Right to such extent shall be held in abeyance for the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

(d) **Pro Rata Distributions**. During such time as this Preferred Stock is outstanding, if the Corporation shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a "**Distribution**"), at any time after the issuance of this Preferred Stock, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of this Preferred Stock (without regard to any limitations on conversion hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date of which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution (provided, however, to the extent that the Holder's right to participate in any such Distribution would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Distribution to such extent (or in the beneficial ownership of any shares of Common Stock as a result of such Distribution to such extent) and the portion of such Distribution shall be held in abeyance for the benefit of the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

(e) **Fundamental Transaction**. If, at any time while this Preferred Stock is outstanding, (i) the Corporation, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Corporation with or into another Person, (ii) the Corporation, directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets in one or a series of related transactions, (iii) any,

direct or indirect, purchase offer, tender offer or exchange offer (whether by the Corporation or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding Common Stock, (iv) the Corporation, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, or (v) the Corporation, directly or indirectly, in one or more related transactions consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another Person whereby such other Person acquires more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination) (each a "**Fundamental Transaction**"), then, upon any subsequent conversion of this Preferred Stock, the Holder shall have the right to receive, for each Conversion Share that would have been issuable upon such conversion immediately prior to the occurrence of such Fundamental Transaction (without regard to any limitation in Section 6(d) on the conversion of this Preferred Stock), the number of shares of Common Stock of the successor or acquiring corporation or of the Corporation, if it is the surviving corporation, and any additional consideration (the "**Alternate Consideration**") receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which this Preferred Stock is convertible immediately prior to such Fundamental Transaction (without regard to any limitation in Section 6(d) on the conversion of this Preferred Stock). For purposes of any such conversion, the determination of the Conversion Ratio shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Corporation shall apportion the Conversion Ratio among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any conversion of this Preferred Stock following such Fundamental Transaction. To the extent necessary to effectuate the foregoing provisions, any successor to the Corporation or surviving entity in such Fundamental Transaction shall file a new Certificate of Designation with the same terms and conditions and issue to the Holders new preferred stock consistent with the foregoing provisions and evidencing the Holders' right to convert such preferred stock into Alternate Consideration. The Corporation shall cause any successor entity in a Fundamental Transaction in which the Corporation is not the survivor (the "**Successor Entity**") to assume in writing all of the obligations of the Corporation under this Certificate of Designation in accordance with the provisions of this Section pursuant to written agreements in form and substance reasonably satisfactory to the Holder and approved by the Holder (without unreasonable delay) prior to such Fundamental Transaction and shall, at the option of the holder of this Preferred Stock, deliver to the Holder in exchange for this Preferred Stock a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Preferred Stock which is convertible for a corresponding number of shares of capital stock of such Successor Entity (or its parent entity) equivalent to the shares of Common Stock acquirable and receivable upon conversion of this Preferred Stock (without regard to any limitations on the conversion of this Preferred Stock) prior to such Fundamental Transaction, and with a conversion price which applies the conversion price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such conversion price being for the purpose of protecting the economic value of this Preferred Stock immediately prior to the consummation of such Fundamental Transaction), and which is reasonably satisfactory in form and substance to the Holder. Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Certificate of Designation referring to the "Corporation" shall refer instead to the Successor Entity), and may exercise every right and power of the Corporation and shall assume all of the obligations of the Corporation under this Certificate of Designation with the same effect as if such Successor Entity had been named as the Corporation herein. Notwithstanding anything to the contrary, the transactions contemplated by the Merger Agreement shall not constitute a Fundamental Transaction.

(f) **Calculations**. All calculations under this Section 7 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 7, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding any treasury shares of the Corporation) issued and outstanding.

(g) **Notice to the Holders.**

i. **Adjustment to Conversion Ratio**. Whenever the Conversion Ratio is adjusted pursuant to any provision of this Section 7, the Corporation shall promptly deliver to each Holder a notice setting forth the Conversion Ratio after such adjustment and setting forth a brief statement of the facts requiring such adjustment.

ii. **Notice to Allow Conversion by Holder**. If (A) the Corporation shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Corporation shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Corporation shall authorize the granting to all holders of the Common Stock of rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Corporation shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Corporation is a party, any sale or transfer of all or substantially all of the assets of the Corporation, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property or (E) the Corporation shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, then, in each case, the Corporation shall cause to be filed at each office or agency maintained for the purpose of conversion of this Preferred Stock, and shall cause to be delivered to each Holder at its last address as it shall appear upon the stock books of the Corporation, at least ten (10) calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange, provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. To the extent that any notice provided hereunder constitutes, or contains, material, non-public information regarding the Corporation or any of the subsidiaries, the Corporation shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K. The Holder shall remain entitled to convert the Conversion Amount of this Preferred Stock (or any part hereof) during the 10-day period commencing on the date of such notice through the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

Section 8. [Reserved.]

Section 9. Miscellaneous.

(a) **Noncircumvention**. The Corporation hereby covenants and agrees that the Corporation will not, by amendment of its Articles of Incorporation, Bylaws or through any reorganization, transfer of assets, consolidation, merger, scheme of arrangement, dissolution, issue or sale of securities, or any other

voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Certificate of Designations, and will at all times in good faith carry out all the provisions of this Certificate of Designations and take all action as may be required to protect the rights of the Holders. Without limiting the generality of the foregoing or any other provision of this Certificate of Designations, the Corporation (a) shall not increase the par value of any shares of Common Stock receivable upon the conversion of any Preferred Stock above the Conversion Rate then in effect and (b) shall take all such actions as may be necessary or appropriate in order that the Corporation may validly and legally issue fully paid and non-assessable shares of Common Stock upon the conversion of Preferred Stock.

(b) **Notices**. Any and all notices or other communications or deliveries to be provided by the Holders hereunder including, without limitation, any Notice of Conversion, shall be in writing and delivered personally, by facsimile, or sent by a nationally recognized overnight courier service, addressed to the Corporation, at P.O. Box 78984, Charlotte, NC 28271; Attention: Chief Executive Officer; or address as the Corporation may specify for such purposes by notice to the Holders delivered in accordance with this Section 9. Any and all notices or other communications or deliveries to be provided by the Corporation hereunder shall be in writing and delivered personally, by facsimile, or sent by a nationally recognized overnight courier service addressed to each Holder at the facsimile number or address of such Holder appearing on the books of the Corporation. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number set forth in this Section prior to 5:30 p.m. (New York City time) on any date, (ii) the next Trading Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number set forth in this Section on a day that is not a Trading Day or later than 5:30 p.m. (New York City time) on any Trading Day, (iii) the second Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service, or (iv) upon actual receipt by the party to whom such notice is required to be given.

(c) **Absolute Obligation**. Except as expressly provided herein, no provision of this Certificate of Designation shall alter or impair the obligation of the Corporation, which is absolute and unconditional, to pay liquidated damages and accrued dividends, as applicable, on the shares of Preferred Stock at the time, place, and rate, and in the coin or currency, herein prescribed.

(d) **Lost or Mutilated Preferred Stock Certificate**. If a Holder's Preferred Stock certificate shall be mutilated, lost, stolen or destroyed, the Corporation shall execute and deliver, in exchange and substitution for and upon cancellation of a mutilated certificate, or in lieu of or in substitution for a lost, stolen or destroyed certificate, a new certificate for the shares of Preferred Stock so mutilated, lost, stolen or destroyed, but only upon receipt of evidence of such loss, theft or destruction of such certificate, and of the ownership hereof reasonably satisfactory to the Corporation.

(e) **Governing Law; Exclusive Jurisdiction**. This Certificate of Designation shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Certificate of Designation shall be governed by, the internal laws of the State of Nevada, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Nevada or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of Nevada. Except as otherwise required by this Certificate of Designation, the Corporation hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the state of Nevada, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, 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 any 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. 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 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 Corporation in any other jurisdiction to collect on the Corporation's obligations to such Holder, to realize on any collateral or any other security for such obligations, or to enforce a judgment or other court ruling in favor of such Holder. The Corporation 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 Certificate of Designation or any transaction contemplated hereby.

(f) **Waiver**. Any of the rights, powers, preferences and other terms of the Preferred Stock set forth herein may be waived on behalf of all holders of Preferred Stock by the affirmative written consent or vote of the holders of at least of at least a majority of the Preferred Shares then outstanding. Any waiver by the Corporation or a Holder of a breach of any provision of this Certificate of Designation shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Certificate of Designation or, except as provided in the immediately preceding sentence, a waiver by any other Holders. The failure of the Corporation or a Holder to insist upon strict adherence to any term of this Certificate of Designation on one or more occasions shall not be considered a waiver or deprive that party (or any other Holder) of the right thereafter to insist upon strict adherence to that term or any other term of this Certificate of Designation on any other occasion. Any waiver by the Corporation or a Holder must be in writing.

(g) **Severability**. If any provision of this Certificate of Designations is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Certificate of Designations so long as this Certificate of Designations as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

(h) **Next Business Day**. Whenever any payment or other obligation hereunder shall be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day.

(i) **Headings**. The headings contained herein are for convenience only, do not constitute a part of this Certificate of Designation and shall not be deemed to limit or affect any of the provisions hereof.

(j) **Status of Converted or Redeemed Preferred Stock**. If any shares of Preferred Stock shall be converted, redeemed or reacquired by the Corporation, such shares shall resume the status of authorized but unissued shares of preferred stock and shall no longer be designated as Series D Convertible Preferred Stock.

(k) **Form of Security**. The Preferred Stock shall be issued as book-entry securities directly registered in the Holder's name on the Corporation's books and records or, if requested by any Holder of the Preferred Stock, such Holder's shares may be issued in certificated form.

(l) **Payment of Collection, Enforcement and Other Costs**. If (a) any Preferred Shares are placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding or a Holder otherwise takes action to collect amounts due under this Certificate of

Designations with respect to the Preferred Shares or to enforce the provisions of this Certificate of Designations; or (b) there occurs any bankruptcy, reorganization, receivership of the Corporation or other proceedings affecting Corporation creditors' rights and involving a claim under this Certificate of Designations, then the Corporation shall pay the costs incurred by such Holder for such collection, enforcement or action or in connection with such bankruptcy, reorganization, receivership or other proceeding, including, without limitation, reasonable attorneys' fees and disbursements.

(m) **Vote to Change the Terms of or Issue Preferred Shares**. In addition to any other rights provided by law, except where the vote or written consent of the holders of a greater number of shares is required by law or by another provision of the Articles of Incorporation, without first obtaining the affirmative vote at a meeting duly called for such purpose or the written consent without a meeting of the holders of at least a majority of the outstanding Preferred Shares (the "**Required Holders**"), voting together as a single class, the Corporation shall not: (a) alter, amend or repeal this Certificate of Designation; or (b) increase or decrease (other than by conversion) the authorized number of Preferred Shares.

(n) **Amendment**. This Certificate of Designations or any provision hereof may be amended by obtaining the affirmative vote at a meeting duly called for such purpose, or written consent without a meeting in accordance with the Nevada Revised Statutes, of the Required Holders, voting separate as a single class, and with such other stockholder approval, if any, as may then be required pursuant to the Nevada Revised Statutes and the Certificate of Incorporation.

(o) **Transfer of Preferred Shares**. A Holder may transfer some or all of its Preferred Shares without the consent of the Corporation, subject to compliance with applicable securities laws.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Designation of Preferences, Rights and Limitations of Series D Convertible Preferred Stock of Fresh Vine Wine, Inc. to be signed by its Chief Executive Officer on this 7th day of March, 2025.

/s/Michael D. Pruitt
Name: Michael D. Pruitt
Title: Chief Executive Officer

ANNEX A

NOTICE OF CONVERSION

**(TO BE EXECUTED BY THE REGISTERED HOLDER
IN ORDER TO CONVERT SHARES OF PREFERRED STOCK)**

The undersigned hereby elects to convert the number of shares of Series D Convertible Preferred Stock indicated below into shares of common stock, par value $0.001 per share (the "**Common Stock**"), of FRESH VINE WINE, INC., a Nevada corporation (the "**Corporation**"), according to the conditions hereof, as of the date written below. If shares of Common Stock are to be issued in the name of a Person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto. No fee will be charged to the Holders for any conversion, except for any such transfer taxes.

Conversion calculations:

Date to Effect Conversion: ____
Number of shares of Preferred Stock owned prior to Conversion: _______________________

Number of shares of Preferred Stock to be Converted: ________________________________
Stated Value of shares of Preferred Stock to be Converted: _____________________________
Number of shares of Common Stock to be Issued: ____________________________________
Applicable Conversion Price: ____

Number of shares of Preferred Stock owned subsequent to Conversion: ___________________

Address for Delivery: ____

OR

DWAC Instructions (if eligible for DWAC):
Broker no: ____________________________
Account no: ___________________________

[HOLDER]

By: _________________________________
Name: ______________________________
Title: _______________________________

Exhibit 3.2

AMENDMENT NO. 2 TO BYLAWS

Effective as of March 7, 2025

This Amendment No. 2 (this "**Amendment**") to the Bylaws of Fresh Vine Wine, Inc., a Nevada corporation (the "**corporation**") (the "**Bylaws**"), is made effective as of the date first above written in accordance with Article IX of the Bylaws, and hereby amends the Bylaws by adding a new Article XI, as follows:

ARTICLE XI
INAPPLICABILITY OF NRS 78.378 THROUGH 78.3793

Section 11.01. *Acquisition of Controlling Interest*. The provisions of NRS 78.378 through 78.3793, inclusive, shall not apply to any "acquisition" of a "controlling interest" (as each term is defined therein) in the corporation resulting from the Amended and Restated Agreement and Plan of Merger Agreement, dated as of March 7, 2025, by and among the corporation, Amaze Holdings, Inc., a Delaware corporation and wholly-owned subsidiary of the corporation, Amaze Software, Inc., a Delaware corporation, and the other signatories thereto, or any amendments thereto (the "**Merger Agreement**"), including without limitation the acquisition of shares of the corporation's capital stock issued in the "Merger," or the acquisition of shares of the corporation's capital stock pursuant to the documents, instruments and arrangements contemplated by the Merger Agreement or upon the consummation of any transactions contemplated thereby, including without limitation (i) any deemed acquisition of shares of the corporation's capital stock by parties to the Fresh Vine Support Agreements (as defined in the Merger Agreement) and related documents by reason of entering into such Fresh Vine Support Agreements and related documents, and (ii) the acquisition of shares of the corporation's common stock upon conversion of the corporation's Series D Convertible Preferred Stock.

Except as expressly amended or modified by this Amendment, all of the terms and conditions of the Bylaws shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, this Amendment is effective as of the effective date noted above.

By: /s/ Michael Pruitt
Michael Pruitt, Chief Executive Officer

Exhibit 10.1

EXECUTION VERSION

AMENDED AND RESTATED

AGREEMENT AND PLAN OF MERGER

among:

FRESH VINE WINE, INC,

AMAZE HOLDINGS INC.

AMAZE SOFTWARE INC.

the STOCKHOLDERS of AMAZE SOFTWARE, INC.,

and

the STOCKHOLDER REPRESENTATIVE

Dated as of March 7, 2025

AMENDED AND RESTATED

AGREEMENT AND PLAN OF MERGER

THIS AMENDED AND RESTATED AGREEMENT AND PLAN OF MERGER (this "***Agreement***") is made and entered into as of March 7, 2025 by and among Fresh Vine Wine, Inc., a Nevada corporation ("***Fresh Vine***"), Amaze Holdings, Inc., a Delaware corporation and wholly owned subsidiary of Fresh Vine ("***Merger Sub***"), Amaze Software, Inc., a Delaware corporation (the "***Company***"), the Stockholders of the Company listed on Schedule I and signatory hereto (each, a "***Holder***" and together the "***Holders***"), and Aaron Day, solely in his capacity as the Holders' Representative (the "***Holders' Representative***"). Certain capitalized terms used in this Agreement that are not otherwise defined in the body or preamble of this Agreement are defined Section 1.

RECITALS

A. Whereas, Fresh Vine and Adifex Holdings LLC, a Delaware limited liability company ("***Adifex***") had previously entered into that certain Business Combination Agreement dated November 3, 2024 ("***BCA***") between them and the other parties thereto, pursuant to which Adifex, and its soon-to-be wholly-owned subsidiary, the Company, were to become subsidiaries of a new public company. Fresh Vine, Adifex and the Company have determined to restructure the transactions contemplated by the BCA. The Company and Adifex have determined to merge Adifex into a subsidiary of the Company effective immediately prior to the Closing of the transactions contemplated in this Agreement. Fresh Vine and the Company desire to enter into this Amended and Restated Agreement and Plan of Merger.

B. Fresh Vine and the Company intend to effect a merger of Merger Sub with and into the Company (the "Merger") in accordance with this Agreement and the DGCL. Upon consummation of the Merger, Merger Sub will cease to exist, and the Company will become a wholly owned subsidiary of Fresh Vine.

C. The Parties intend that the Merger will qualify as a "reorganization" within the meaning of Section 368(a) of the Code and the Treasury Regulations, and that this Agreement be, and hereby is, adopted as a "plan of reorganization" for the purposes of Section 368 of the Code and Treasury Regulations Sections 1.368-2(g) and 1.368-3 (the "***Intended Tax Treatment***").

D. The Fresh Vine Board has (i) determined that the Contemplated Transactions are fair to, advisable and in the best interests of Fresh Vine and its stockholders, (ii) approved and declared advisable this Agreement, the Transaction Documents and the Contemplated Transactions, including the issuance of the Merger Consideration to the stockholders of the Company pursuant to the terms of this Agreement and (iii) determined to recommend, upon the terms and subject to the conditions set forth in this Agreement, that the stockholders of Fresh Vine vote to approve the Fresh Vine Stockholder Matters (as defined herein) and thereby approve the Contemplated Transactions and against any competing proposals.

E. The Merger Sub Board has (i) determined that the Contemplated Transactions are fair to, advisable, and in the best interests of Merger Sub and its sole stockholder, (ii) approved and declared advisable this Agreement, the Transaction Documents and the Contemplated Transactions and (iii) determined to recommend, upon the terms and subject to the conditions set forth in this Agreement, that the stockholder of Merger Sub votes to adopt this Agreement and thereby approve the Contemplated Transactions.

F. The Company Board has (i) determined that the Contemplated Transactions are fair to, advisable and in the best interests of the Company and its stockholders, (ii) approved and declared advisable this Agreement, the Transaction Documents and the Contemplated Transactions and (iii) determined to recommend, upon the terms and subject to the conditions set forth in this Agreement, that the stockholders of Company vote to adopt this Agreement, the Transaction Documents and thereby approve the Contemplated Transactions.

G. At least a majority of the voting power of the stock of the Company shall have approved this Agreement, the Transaction Documents and thereby approved the Contemplated Transactions ("***Company Stockholder Consent***").

H. Concurrently with the execution and delivery of this Agreement and as a condition and inducement to the Company's willingness to enter into this Agreement, each of the officers, directors and holders of issued and outstanding Fresh Vine Common Stock set forth on Section A of the Fresh Vine Disclosure Schedule (solely in their capacity as stockholders of Fresh Vine) are executing support agreements in favor of the Company in substantially the form attached hereto as Exhibit B (the "***Fresh Vine Stockholder Support Agreement***"), pursuant to which such Persons have, subject to the terms and conditions set forth therein, agreed to support the Contemplated Transactions by voting all of their shares of capital stock of Fresh Vine in favor of the Fresh Vine Stockholder Matters and against any competing proposals.

I. Concurrently with the execution and delivery of this Agreement and as a condition and inducement to the Parties' willingness to enter into this Agreement those directors and officers of Fresh Vine listed on Section A of the Fresh Vine Disclosure Schedule are executing lock-up agreements in substantially the form attached hereto as Exhibit C (each a "***Lock-Up Agreement***" and collectively, the "***Lock-Up Agreements***") as of the Effective Time and after giving effect to the Merger.

AGREEMENT

The Parties, intending to be legally bound, agree as follows:

Section 1. Definitions and Interpretative Provisions.

1.1. Definitions.

(a) For purposes of the Agreement (including this Section 1):

"Affiliate" shall have the meaning given to such term in Rule 144 under the Securities Act.

"Affordable Care Act" means the Patient Protection and Affordable Care Act.

"Balance Sheet Date" means September 30, 2024.

"Business" means the business of the Company as a global e-commerce platform and mobile design SaaS provider that enables sellers to create and monetize their fanbases with physical and digital catalogs, inventory and order management, logistics, and customer messaging.

"Business Day" means any day other than a day on which banks in the State of Delaware are authorized or obligated to be closed.

"COBRA" means the Consolidated Omnibus Budget Reconciliation Act of 1985, as set forth in Section 4980B of the Code and Part 6 of Title I of ERISA.

"Code" means the Internal Revenue Code of 1986, as amended.

"Common Stock Limit" means the "Exchange Share Cap" and "Individual Holder Share Cap" limitations provided for in the Certificate of Designation of Preferences, Rights and Limitations of the Series D Convertible Preferred Stock of Fresh Vine (the "***Series D Certificate***") upon conversion or exchange of the Fresh Vine Series D Convertible Preferred Stock.

"Company Board" means the board of directors of the Company.

"Company Common Stock" means the Common Stock of the Company, as defined in its Certificate of Incorporation.

"Company Equity Plan" means the Famous Industries, Inc. 2011 Stock Plan, Amended and Restated April 15, 2021 and the Famous Industries 2021 Stock Plan, Amended and Restated October 24, 2022.

"Company IP Rights" means all Intellectual Property owned, licensed, or controlled by the Company or its Subsidiaries that is necessary for, or used or held for use in, the operation of the business of the Company and its Subsidiaries as presently conducted.

"Company Material Adverse Effect" means any Effect that, considered together with all other Effects that have occurred prior to the date of determination of the occurrence of a Company Material Adverse Effect, has or would reasonably be expected to have a material adverse effect on the business, financial condition, assets, liabilities or results of operations of the Company or its Subsidiaries, taken as a whole; provided, however, that Effects arising or resulting from the following shall not be taken into account in determining whether there has been a Company Material Adverse Effect: (a) the announcement of this Agreement or the pendency of the Contemplated Transactions, (b) the taking of any action, or the failure to take any action, by the Company that is required to comply with the terms of this Agreement, (c) any natural disaster, calamity or epidemics, pandemics (including COVID-19, any COVID-19 Measures, and any precautionary or emergency measures, recommendations, protocols or orders taken or issued by any Person in response to COVID-19) or other force majeure events, or any act or threat of terrorism or war, any armed hostilities or terrorist activities (including any escalation or general worsening of any of the foregoing) anywhere in the world or any governmental or other response or reaction to any of the foregoing, (d) any change in GAAP or applicable Law or the interpretation thereof, or (e) general economic or political conditions or conditions generally affecting the industry in which the Company and its Subsidiaries operate; except in each case with respect to clauses (c), (d) and (e), to the extent disproportionately affecting the Company and its Subsidiaries, taken as a whole, relative to other similarly situated companies in the industry in which the Company and its Subsidiaries operate.

"Company Options" means options or other rights to purchase Company Common Stock issued by the Company.

"Company Preferred Stock" means the Series A-1 Preferred Stock, Series A-2 Preferred Stock, Series A-3 Preferred Stock and Series A-4 Preferred Stock of the Company, defined in its Certificate of Incorporation.

"Company Registered IP" means all Company IP Rights that are owned by the Company that are registered, filed or issued under the authority of, with or by any Governmental Authority, including all patents, registered copyrights and registered trademarks and all applications and registrations for any of the foregoing.

"Company Stock" means the Company Common Stock and the Company Preferred Stock.

"Company Stock Certificate" means a valid certificate representing any Company Stock outstanding immediately prior to the Effective Time.

"Company Stockholder Consent" shall have the meaning set forth in the recitals.

"Company Unaudited Interim Balance Sheet" means the estimated unaudited statement of assets, liabilities and partner's capital of the Company for the nine (9) month period ended on September 30, 2024.

"Company Valuation" means $75,000,000.

"Confidentiality Agreement" means the Confidentiality Agreement previously executed between the Company and Fresh Vine.

"Consent" means any approval, consent, ratification, permission, waiver or authorization (including any Governmental Authorization).

"Contemplated Transactions" means the Merger and the other transactions contemplated by this Agreement.

"Contract" means, with respect to any Person, any written agreement, contract, subcontract, lease (whether for real or personal property), mortgage, license, or other legally binding commitment or undertaking of any nature to which such Person is a party or by which such Person or any of its assets are bound or affected under applicable Law.

"DGCL" means the Delaware General Corporations Law, as amended.

"Effect" means any effect, change, event, circumstance, or development.

"Employee Plan" means (a) an "employee benefit plan" within the meaning of Section 3(3) of ERISA whether or not subject to ERISA; (b) other plan, program, policy or arrangement, whether or not reduced to writing, providing for stock options, stock appreciation rights, restricted stock, phantom stock, stock purchases, or any other equity-based compensation, bonuses (including any annual bonuses, retention bonuses, referral bonuses, performance bonuses, etc.) or other incentives, salary continuation pay, severance pay, or any other termination pay, deferred compensation, employment, compensation, commission or other variable compensation, , change in control or transaction bonuses, supplemental, vacation, retirement benefits (including post-retirement health and welfare benefits), pension benefits, profit-sharing benefits, fringe benefits, life insurance benefits, perquisites, health benefits, medical benefits, dental benefits, vision benefits, and all other employee benefit plans, agreements, and arrangements, not described in (a) above; and (c) all other plans, programs, policies or arrangements providing compensation to current or former employees, consultants and non-employee directors.

"Encumbrance" means any lien, pledge, hypothecation, charge, mortgage, security interest, lease, license, option, easement, reservation, servitude, adverse title, claim, infringement, interference, option, right of first refusal, preemptive right, community property interest or restriction or encumbrance of any nature (including any restriction on the voting of any security, any restriction on the transfer of any security or other asset, any restriction on the receipt of any income derived from any asset, any restriction on the use of any asset and any restriction on the possession, exercise or transfer of any other attribute of ownership of any asset).

"Enforceability Exceptions" means the (a) laws of general application relating to bankruptcy, insolvency and the relief of debtors and (b) rules of law governing specific performance, injunctive relief and other equitable remedies.

"Entity" means any corporation (including any nonprofit corporation), partnership (including any general partnership, limited partnership or limited liability partnership), joint venture, estate, trust, company (including any company limited by shares, limited liability company or joint stock company), firm, society or other enterprise, association, organization or entity, and each of its successors.

"Equity Interests" means (a) in the case of a corporation, any and all shares (however designated) of capital stock, (b) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of capital stock, (c) in the case of a partnership or limited liability Company, any and all partnership or membership interests (whether general or limited) or units (whether common or preferred), (d) in any case, 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, the issuing person, and (d) in any case, any right to acquire any of the foregoing.

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

"ERISA Affiliate" means, with respect to any Entity, any other Person that would be treated as a single employer with such Entity or part of the same "controlled group" as such Entity under Sections 414(b),(c),(m) or (o) of the Code.

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

"Fresh Vine Associate" means any current employee, independent contractor, officer or director of Fresh Vine or any of its Subsidiaries.

"Fresh Vine Balance Sheet" means the audited balance sheet of Fresh Vine as of September 30, 2024, as filed with the SEC.

"Fresh Vine Board" means the board of directors of Fresh Vine.

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

"Fresh Vine Contract" means any Contract: (a) to which Fresh Vine is a party, (b) by which Fresh Vine or any Fresh Vine IP Rights or any other asset of Fresh Vine is or may become bound or under which Fresh Vine has, or may become subject to, any obligation or (c) under which Fresh Vine has or may acquire any right or interest.

"Fresh Vine Employee Plan" means any Employee Plan that Fresh Vine or any of its Subsidiaries (i) sponsors, maintains, administers, or contributes to, or (ii) provides benefits under or through, or (iii) has any obligation to contribute to or provide benefits under or through, or (iv) may reasonably be expected to have any Liability, or (v) utilizes to provide benefits to or otherwise cover any current or former employee, officer, director or other service provider of Fresh Vine or any of its Subsidiaries (or their spouses, dependents, or beneficiaries).

"Fresh Vine IP Rights" means all Intellectual Property owned, licensed or controlled by Fresh Vine that is necessary for, or used or held for use in, the operation of the business of Fresh Vine as presently conducted.

"Fresh Vine Material Adverse Effect" means any Effect that, considered together with all other Effects that have occurred prior to the date of determination of the occurrence of the Fresh Vine Material Adverse Effect, has or would reasonably be expected to have a material adverse effect on the business, financial condition, assets, liabilities or results of operations of Fresh Vine or any of its Subsidiaries, taken as a whole; provided, however, that Effects arising or resulting from the following shall not be taken into account in determining whether there has been a Fresh Vine Material Adverse Effect: (a) the announcement of this Agreement or the pendency of the Contemplated Transactions, (b) any change in the stock price or trading volume of Fresh Vine Common Stock (it being understood, however, that any Effect causing or contributing to any change in stock price or trading volume of Fresh Vine Common Stock may be taken into account in determining whether a Fresh Vine Material Adverse Effect has occurred, unless such Effects are otherwise excepted from this definition), (c) the taking of any action, or the failure to take any action, by Fresh Vine that is required to comply with the terms of this Agreement, (d) any natural disaster, calamity or epidemics, pandemics (including COVID-19, any COVID-19 Measures, and any precautionary or emergency measures, recommendations, protocols or orders taken or issued by any Person in response to COVID-19) or other force majeure events, or any act or threat of terrorism or war, any armed hostilities or terrorist activities (including any escalation or general worsening of any of the foregoing) anywhere in the world, or any governmental or other response or reaction to any of the foregoing, (e) any change in GAAP or applicable Law or the interpretation thereof or (f) general economic or political conditions or conditions generally affecting the industries in which Fresh Vine or any of its Subsidiaries operates; except, in each case with respect to clauses (d), (e) and (f), to the extent materially and disproportionately affecting Fresh Vine and any its Subsidiaries, taken as a whole, relative to other similarly situated companies in the industries in which Fresh Vine or any of its Subsidiaries operates. Notwithstanding the above, a delisting of Fresh Vine Common Stock on the NYSE American shall constitute a Fresh Vine Material Adverse Effect, provided that the Company has not refused or unreasonably delayed or conditioned its consent to reasonable actions by Fresh Vine to maintain the listing of Fresh Vine Common Stock on NYSE American.

"Fresh Vine Options" means options to purchase shares of Fresh Vine Common Stock granted by Fresh Vine, including pursuant to any Fresh Vine Stock Plan, as an "inducement" award.

"Fresh Vine Preferred Stock" means shares of Series A Convertible Preferred Stock, Series B Convertible Preferred Stock, and Series D Convertible Preferred Stock of Fresh Vine, as defined in its Articles of Incorporation.

"Fresh Vine Series D Convertible Preferred Stock" means shares of Series D Convertible Preferred Stock, $0.001 par value per share, of Fresh Vine.

"Fresh Vine Stock" means Fresh Vine Common Stock and Fresh Vine Series D Convertible Preferred Stock.

"Fresh Vine Stockholder Support Agreement" shall have the meaning set forth in the recitals.

"Fresh Vine Warrants" means warrants to purchase shares of Fresh Vine Common Stock.

"GAAP" means the United States generally accepted accounting principles.

"Governmental Authority" means any: (a) nation, state, commonwealth, province, territory, county, municipality, district or other jurisdiction of any nature, (b) federal, state, local, municipal, foreign, supra-national or other government, (c) governmental or quasi-governmental authority of any nature (including any governmental division, department, agency, commission, bureau, instrumentality, official, ministry, fund, foundation, center, organization, unit, body or Entity and any court or other tribunal, and for the avoidance of doubt, any Taxing Authority) or (d) self-regulatory organization (including the NYSE American).

"Governmental Authorization" means any: (a) permit, license, certificate, franchise, permission, variance, exception, order, approval, clearance, registration, qualification or authorization issued, granted, given or otherwise made available by or under the authority of any Governmental Authority or pursuant to any Law or (b) right under any Contract with any Governmental Authority.

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

"Intellectual Property" means: (a) United States, foreign and international patents, patent applications, including all provisionals, nonprovisionals, substitutions, divisionals, continuations, continuations-in-part, reissues, extensions, supplementary protection certificates, reexaminations, term extensions, certificates of invention and the equivalents of any of the foregoing, statutory invention registrations, invention disclosures and inventions (collectively, "Patents"), (b) trademarks, service marks, trade names, domain names, corporate names, brand names, URLs, trade dress, logos and other source identifiers, including registrations and applications for registration thereof and goodwill associated therewith, (c) copyrights, including registrations and applications for registration thereof, (d) Software, including all source code, object code and related documentation, (e) formulae, customer lists, trade secrets, know-how, confidential information and other proprietary rights and intellectual property, whether patentable or not, and (f) all United States and foreign rights arising under or associated with any of the foregoing.

"IRS" means the United States Internal Revenue Service.

"Key Employee" means (i) an executive officer of Fresh Vine or the Company; and (ii) any employee of Fresh Vine or the Company that reports directly to the Fresh Vine Board or the Company Board or to an executive officer of Fresh Vine or the Company, as applicable.

"Knowledge" means, with respect to any Person, the actual knowledge after reasonable inquiry of such Person or any senior-level executive employee or director of such Person who has or would reasonably be expected to have such knowledge after reasonable inquiry of such employee or director's direct reports. Any Person that is an Entity shall have Knowledge if any executive officer or director of such Person as of the date such knowledge is imputed has or should reasonably be expected to have Knowledge of such fact or other matter.

"Law" means any federal, state, national, supra-national, foreign, local or municipal or other law, statute, constitution, principle of common law, resolution, ordinance, code, edict, decree, rule, regulation, ruling or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or

under the authority of any Governmental Authority (including under the authority of the NYSE American or the Financial Industry Regulatory Authority).

"Leased Real Property" means the real property leased by the Company or Subsidiaries as tenant, together with, to the extent leased by the Company or Subsidiaries, all buildings and other structures, facilities or improvements located thereon and all easements, licenses, rights and appurtenances of the Company or Subsidiaries relating to the foregoing.

"Legal Proceeding" means any action, suit, litigation, arbitration, proceeding (including any civil, criminal, administrative, investigative or appellate proceeding), hearing, inquiry, audit, examination or investigation commenced, brought, conducted or heard by or before, or otherwise involving, any court or other Governmental Authority or any arbitrator or arbitration panel.

"Merger Sub Board" means the board of directors of Merger Sub.

"Merger Warrants" means the warrants to purchase Fresh Vine Common Stock at a price of $0.80 per share for a period of 5 years with a cash-only exercise feature to be issued to former Adifex investors in connection with the Closing.

"Multiemployer Plan" means a "multiemployer plan," as defined in Section 3(37) or 4001(a)(3) of ERISA.

"Multiple Employer Plan" means a "multiple employer plan" within the meaning of Section 413(c) of the Code or Section 3(40) of ERISA.

"Multiple Employer Welfare Arrangement" means a "multiple employer welfare arrangement" within the meaning of Section 3(40) of ERISA.

"NYSE American" means the NYSE American Stock Exchange.

"Order" means any judgment, order, writ, injunction, ruling, decision or decree of (that is binding on a Party), or any plea agreement, corporate integrity agreement, resolution agreement, or deferred prosecution agreement with, or any settlement under the jurisdiction of, any court or Governmental Authority.

"Ordinary Course of Business" means, in the case of each of the Company and Fresh Vine, such actions taken in the ordinary course of its normal operations and consistent with its past practices.

"Organizational Documents" means, with respect to any Person (other than an individual), (a) the certificate or articles of association or incorporation or organization or limited partnership or limited liability Company, and any joint venture, limited liability company, operating or partnership agreement and other similar documents adopted or filed in connection with the creation, formation or organization of such Person and (b) all bylaws, regulations and similar documents or agreements relating to the organization or governance of such Person, in each case, as amended or supplemented.

"Party" or ***"Parties"*** means the Company, Merger Sub and Fresh Vine.

"Permitted Encumbrance" means (a) any statutory liens for current Taxes not yet due and payable or for Taxes that are being contested in good faith and for which adequate reserves have been made on the Company Unaudited Interim Balance Sheet or the Fresh Vine Unaudited Interim Balance Sheet, as applicable, in accordance with GAAP, (b) minor liens that have arisen in the Ordinary Course of Business and that do not (in any case or in the aggregate) materially detract from the value of the assets subject thereto or materially impair the operations of the Company or Fresh Vine, as applicable, (c) statutory liens to secure obligations to landlords, lessors or renters under leases or rental agreements, (d) deposits or pledges made in connection with, or to secure payment of, workers' compensation, unemployment insurance or similar programs mandated by Law, (e) statutory liens in favor of carriers, warehousemen, mechanics and materialmen, to secure claims for labor, materials or supplies and (f) liens arising under applicable securities Law.

"Person" means any individual, Entity or Governmental Authority.

"Products" means any products, product candidates or services, researched, developed, manufactured, labeled, out-licensed, sold, marketed, promoted, imported or exported, distributed or otherwise made available, as applicable, by or on behalf of the Company or any Subsidiary as of the Effective Date.

"Proxy Statement" means the proxy statement to be sent to Fresh Vine's stockholders in connection with the Fresh Vine Stockholders' Meeting.

"Required Fresh Vine Shareholder Vote" means the amount of Fresh Vine stockholder votes needed to approve the Fresh Vine Stockholder Matters under applicable NYSE American rules or Law.

"Resale Registration Statement" means a registration statement on Form S-1 (or any other applicable form in accordance with the Securities Act) required to be filed pursuant to Section 6.17 hereto, including any amendments or supplements thereto, registering the public offering and resale of Fresh Vine Common Stock issued or issuable pursuant to this Agreement as Merger Consideration, including upon conversion of the Fresh Vine Series D Convertible Preferred Stock and exercise of the Merger Warrants.

"Representatives" means directors, officers, employees, agents, attorneys, accountants, investment bankers, advisors and representatives of a Person.

"Sarbanes-Oxley Act" means the Sarbanes-Oxley Act of 2002, as amended.

"SEC" means the United States Securities and Exchange Commission.

"Securities Act" means the Securities Act of 1933, as amended.

"Software" means all computer software (in object code or source code format), and related documentation and materials.

"Subsidiary" means, with respect to an Entity, a Person if such Person directly or indirectly owns or purports to own, beneficially or of record, (a) an amount of voting securities or other interests in such Entity that is sufficient to enable such Person to elect at least a majority of the members of such entity's board of directors or other governing body or (b) at least 50% of the outstanding equity, voting, beneficial or financial interests in such Entity.

"Tax" means any federal, state, local, foreign or other tax, including any income tax, franchise tax, capital gains tax, gross receipts tax, value-added tax, surtax, estimated tax, unemployment tax, national health insurance tax, excise tax, ad valorem tax, transfer tax, stamp tax, sales tax, use tax, property tax, business tax, withholding tax, payroll tax, customs duty, alternative or add-on minimum or other tax or similar charge in the nature of a tax (whether imposed directly or through withholding and whether or not disputed), and including any fine, penalty, addition to tax, interest or additional amount imposed by a Governmental Authority with respect thereto (or attributable to the nonpayment thereof).

"Tax Return" means any return (including any information return), report, statement, declaration, claim or refund, estimate, schedule, notice, notification, form, election, certificate or other document or information, and any amendment or supplement to any of the foregoing, filed or required to be filed with any Governmental Authority (or provided to a payee) in connection with the determination, assessment, collection or payment of any Tax or in connection with the administration, implementation or enforcement of or compliance with any Law relating to any Tax.

"Taxing Authority" means, with respect to any Tax, the Governmental Authority or other authority competent to impose such Tax or responsible for the administration and/or collection of such Tax or enforcement of any law in relation to Tax.

"Transaction Documents" means this Agreement and each other exhibit, certificate, document, instrument or agreement executed in connection with this Agreement and the Contemplated Transactions.

"Treasury Regulations" means the United States Treasury regulations promulgated under the Code.

1.2. Other Definitional and Interpretative Provisions. The words "hereof," "herein" and "hereunder" and words of like import used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The captions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof. References to Sections, Exhibits and Schedules are to Sections, Exhibits and Schedules of this Agreement unless otherwise specified. Any capitalized terms used in any Exhibit or Schedule but not otherwise defined therein shall have the meaning as defined in this Agreement. Any singular term in this Agreement shall be deemed to include the plural, and any plural term the singular, the masculine gender shall include the feminine and neuter genders; the feminine gender shall include the masculine and neuter genders; and the neuter gender shall include masculine and feminine gender. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation," whether or not they are in fact followed by those words or words of like import. The word "or" is not exclusive. "Writing," "written" and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form. References to any agreement or Contract are to that agreement or Contract as amended, modified or supplemented from time to time in accordance with the terms hereof and thereof. References to any Person include the successors and permitted assigns of that Person. References to any statute are to that statute and to the rules and regulations promulgated thereunder, in each case as amended, modified, re-enacted thereof, substituted, from time to time. References to "$" and "dollars" are to the currency of the United States. All accounting terms used herein will be interpreted, and all accounting determinations hereunder will be made, in accordance with GAAP unless otherwise expressly specified. References from or through any date shall mean, unless otherwise specified, from and including or through and including, respectively. All references to "days" shall be to calendar days unless otherwise indicated as a "Business Day." Except as otherwise specifically indicated, for purposes of measuring the beginning and ending of time periods in this Agreement (including for purposes of "Business Day" and for hours in a day or Business Day), the time at which a thing, occurrence or event shall begin or end shall be deemed to occur in the Pacific Time zone of the United States. The Parties agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not be applied in the construction or interpretation of this Agreement. The Parties agree that the Company Disclosure Schedule or Fresh Vine Disclosure Schedule shall be arranged in sections and subsections corresponding to the numbered and lettered sections and subsections contained in Section 3 or Section 4, respectively. The disclosures in any section or subsection of the Company Disclosure Schedule or the Fresh Vine Disclosure Schedule shall only qualify other sections and subsections in Section 3 or Section 4, respectively, to the extent it is readily apparent from a reading of the disclosure that such disclosure is applicable to such other sections and subsections. The words "delivered" or "made available" mean, with respect to any documentation, (a) that prior to 5:00 p.m. Pacific Time on the date that is two days prior to the date of this Agreement, a copy of such material has been posted to and made available by a Party to the other Party and its Representatives in the electronic data room maintained by such disclosing Party for the purposes of the Contemplated Transactions or (b) delivered by or on behalf of a Party or its Representatives to the other Party or its Representatives via electronic mail or in hard copy form prior to the execution of this Agreement.

Section 2. Description of Transaction

2.1. Merger. Upon the terms and subject to the conditions set forth in this Agreement and in accordance with the DGCL, at the Effective Time, Merger Sub shall be merged with and into the Company, and the separate existence of Merger Sub shall cease. The Company will continue as the surviving corporation in the Merger (the "***Surviving Corporation***").

2.2 Effects of the Merger. The Merger shall have the effects set forth in this Agreement, the Certificate of Merger and in the applicable provisions of the DGCL. As a result of the Merger, the Company will become a wholly owned subsidiary of Fresh Vine.

2.3 Closing; Effective Time. The consummation of the Merger (the "***Closing***") shall take place remotely on the date of this Agreement or at such day and time as mutually agreed by the Parties. The date on which the Closing actually takes place is referred to as the "Closing Date." At the Closing, the Parties shall cause the Merger to be consummated by executing and filing with the Secretary of State of the State of Delaware a certificate of merger with respect to the Merger, satisfying the applicable requirements of the DGCL and in form and substance as agreed to by the Parties (the "***Certificate of Merger***"). The Merger shall become effective at the time of the filing of such Certificate of Merger with the Secretary of State of the State of Delaware or at such later time as may be specified in such Certificate of Merger with the consent of Fresh Vine and the Company (the time as of which the Merger becomes effective being referred to as the "***Effective Time***").

2.4 Organizational Documents; Directors and Officers.

(a) the certificate of incorporation of the Surviving Corporation shall be amended and restated in the Merger to read as set forth on Exhibit A to the Certificate of Merger, until thereafter amended as provided by the DGCL and such articles incorporation;

(b) the bylaws of the Surviving Corporation shall be identical to the bylaws of the Company as in effect immediately prior to the Effective Time, until thereafter amended as provided by the DGCL and such bylaws;

(c) the directors and officers of the Surviving Corporation, each to hold office in accordance with the certificate of incorporation and bylaws of the Surviving Corporation, shall be the directors and officers of the Company immediately prior to the Effective Time, or such other persons as shall be mutually agreed upon by Fresh Vine and the Company.

2.5 Conversion of Company Equity Securities.

(a) At the Effective Time, by virtue of the Merger and without any further action on the part of Fresh Vine, Merger Sub, the Company or any Stockholder of the Company or Fresh Vine:

(i) any Company Common Stock held as treasury stock or held or owned by Fresh Vine, Merger Sub, the Company or any Subsidiary of the Company immediately prior to the Effective Time shall be canceled and retired and shall cease to exist, and no consideration shall be delivered in exchange therefor;

(ii) except as set forth on Schedule 2.5(ii), any outstanding promissory notes that may be converted into Company Common Stock shall be so converted by their terms, immediately prior to the Effective Time;

(iii) any outstanding warrants exercisable to acquire Company Common Stock shall be net exercised immediately prior to the Effective Time into that number of shares of Fresh Vine Common Stock;

(iv) any outstanding stock options, stock appreciation rights or other rights to purchase or acquire Company capital stock, if any, that is outstanding or has not been exercised immediately prior to the Effective Time shall be cancelled and terminated in accordance with their terms and the terms of the Company's Equity Plan.

(v) at the Effective time, the aggregate merger consideration (the "***Merger Consideration***") to be paid by Fresh Vine to the Company shall be Seventy-Five Million Dollars ($75,000,000) in the form of Fresh Vine Series D Convertible Preferred Stock, up to a total of 750,000 shares of Fresh Vine Series D Convertible Preferred Stock (the "***Preferred Stock Consideration***"), plus Seven Million Dollars ($7,000,000) of Merger Warrants, up to an aggregate of 8,750,000 Merger Warrants (the "***Warrant Consideration***").

(vi) subject to Section 2.5(b), each share of Company Stock outstanding immediately prior to the Effective Time shall be converted solely into the right to receive the number of shares of the Preferred Stock Consideration and Warrants Consideration set forth next to the holder's name on Schedule 2.5(a)(vi) hereto.

(b) No fractional shares of Fresh Vine Stock shall be issued in connection with the Merger, and no certificates or scrip for any such fractional shares shall be issued.

(c) Each share of common stock, $0.001 par value per share, of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into and exchanged for one validly issued, fully paid and nonassessable share of common stock, $0.00001 par value per share, of the Surviving Corporation. Each stock certificate of Merger Sub evidencing ownership of any such shares shall, as of the Effective Time, evidence ownership of such shares of common stock of the Surviving Corporation.

2.6 Closing of the Company's Transfer Books. At the Effective Time: (a) all Company Common Stock outstanding immediately prior to the Effective Time shall be treated in accordance with Section 2.5(a), and all holders of certificates representing Company Common Stock that were outstanding immediately prior to the Effective Time shall cease to have any rights as stockholders of the Company and (b) the stock transfer books of the Company shall be closed with respect to all Company Common Stock outstanding immediately prior to the Effective Time. No further transfer of any such Company Common Stock shall be made on such stock transfer books after the Effective Time.

2.7 Surrender of Company Stock.

(a) On or prior to the Closing Date, Fresh Vine and the Company shall jointly select a reputable bank, transfer agent or trust Company to act as exchange agent in the Merger (the "Exchange Agent"). At the Effective Time, Fresh Vine shall deposit with the Exchange Agent certificates or evidence of book-entry shares representing the shares of Fresh Vine Series D Convertible Preferred Stock and Merger Warrants issuable pursuant to Section 2.5(a) in exchange for Company Common Stock.

(b) Promptly after the Effective Time, the Parties shall cause the Exchange Agent to mail to the Persons who were record holders of Company Stock that were converted into the right to receive the Merger Consideration, if any: (i) a letter of transmittal in customary form and containing such provisions as Fresh Vine may reasonably specify (including a provision confirming that delivery of Company Stock Certificates shall be effected, and risk of loss and title to Company Stock Certificates shall pass, only upon proper delivery of such Company Stock Certificates, if applicable, to the Exchange Agent) and (ii) instructions for effecting the surrender of Company Stock Certificates, if applicable, in exchange for Merger Consideration. Upon surrender of a Company Stock Certificate to the Exchange Agent for exchange, together with a duly executed letter of transmittal and such other documents as may be reasonably required by the Exchange Agent or Fresh Vine: (A) the holder of such Company Stock Certificate shall be entitled to receive in exchange therefor book-entry shares representing their portion of the Preferred Stock Consideration and Warrant Consideration, if any, set forth on Schedule 2.5(a)(vi) that such holder has the right to receive pursuant to the provisions of Section 2.5(a) and (B) the Company Stock Certificate so surrendered shall be canceled. Until surrendered as contemplated by this Section 2.7(b), each Company Stock Certificate shall be deemed, from and after the Effective Time, to represent only the right to receive the amount of book-entry shares of the Preferred Stock Consideration and certificates representing the Warrant Consideration, if any, set forth on Schedule 2.5(a)(vi). If any Company Stock Certificate shall have been lost, stolen or destroyed, Fresh Vine may, in its discretion and as a condition precedent to the delivery of any Merger Consideration, require the owner of such lost, stolen or destroyed Company Stock Certificate to provide an applicable affidavit with respect to such Company Stock Certificate and post a bond indemnifying Fresh Vine against any claim suffered by Fresh Vine related to the lost, stolen or destroyed Company Stock Certificate or any Merger Consideration issued in exchange therefor as Fresh Vine may reasonably request .

(c) No dividends or other distributions declared or made with respect to Fresh Vine Stock with a record date after the Effective Time shall be paid to the holder of any unsurrendered Company Stock Certificate with respect to the shares of Fresh Vine Stock that such holder has the right to receive in the Merger until such holder surrenders such Company Stock Certificate, if applicable, or provides an affidavit of loss or destruction in lieu thereof in accordance with this Section 2.7 (at which time such holder shall be entitled, subject to the effect of applicable abandoned property, escheat or similar laws, to receive all such dividends and distributions, without interest).

(d) Any shares of the Preferred Stock Consideration and Warrant Consideration deposited with the Exchange Agent that remain undistributed to holders of Company Stock Certificates as of the date that is 180 days after the Closing Date shall be delivered to Fresh Vine upon demand, and any holders of Company Stock Certificates who have not theretofore surrendered their Company Stock Certificates in accordance with this Section 2.7 shall thereafter look only to Fresh Vine for satisfaction of their claims for Fresh Vine Stock and any dividends or distributions with respect to shares of Fresh Vine Series D Convertible Preferred Stock or Merger Warrants, as applicable.

(e) No Party shall be liable to any holder of any Company Stock Certificate or to any other Person with respect to any shares of Fresh Vine Series D Convertible Preferred Stock or Merger Warrants (or dividends or distributions with respect thereto) or for any cash amounts delivered to any public official pursuant to any applicable abandoned property Law, escheat Law or similar Law.

2.8 Appraisal Rights.

(a) Notwithstanding any provision of this Agreement to the contrary, shares of Company Common Stock that are outstanding immediately prior to the Effective Time and that are held by Holders who have neither voted in favor of the Merger nor consented thereto in writing and who have exercised and perfected appraisal rights for such Company Common Stock in accordance with the DGCL (collectively, the "***Dissenting Shares***") shall not be converted into or represent the right to receive the Merger Consideration attributable to such Dissenting Shares. Such Holders shall be entitled to receive payment of the appraised value of such Company Common Stock held by them in accordance with the Section 262 of the DGCL, unless and until such Holders fail to perfect or effectively withdraw or otherwise lose their appraisal rights under the DGCL. All Dissenting Shares held by Holders who shall have failed to perfect or who effectively shall have withdrawn or lost their right to appraisal of such Company Common Stock under the DGCL (whether occurring before, at, or after the Effective Time) shall thereupon be deemed to be converted into and to have become exchangeable for, as of the Effective Time, the right to receive the Merger Consideration, without interest, attributable to such Dissenting Shares upon their surrender in the manner provided in Sections 2.5 and 2.7.

(b) The Company shall give Fresh Vine prompt written notice of any demands by dissenting Holders received by the Company, withdrawals of such demands and any other instruments served on the Company and any material correspondence received by the Company in connection with such demands.

2.9 Further Action. If, at any time after the Effective Time, any further action is determined by the Surviving Corporation to be necessary or desirable to carry out the purposes of this Agreement, the Transaction Documents, the Contemplated Transactions or to vest the Surviving Corporation with full right, title and possession of and to all rights and property of the Company, then the officers and directors of the Surviving Corporation shall be fully authorized, and shall use their and its commercially reasonable efforts (in the name of the Company, in the name of Merger Sub, in the name of the Surviving Corporation and otherwise) to take such action.

2.10 Withholding. Each of the Exchange Agent, Fresh Vine and the Surviving Corporation, and their respective agents, shall be entitled to deduct and withhold from any consideration deliverable pursuant to this Agreement such amounts as are required to be deducted or withheld from such consideration under the Code or under any other applicable Law with respect to the making of such payment and shall be entitled to request any reasonably appropriate Tax forms, including an IRS Form W-9 or the appropriate IRS Form W-8, as applicable, from any recipient of payments hereunder. To the extent such amounts are so deducted or withheld and remitted to the appropriate Taxing Authority, such amounts shall be treated for all purposes under this Agreement as having been paid to the Person to whom such amounts would otherwise have been paid.

Section 3. Representations and Warranties of the Company.

The Company represents and warrants to Fresh Vine that the statements contained in this Section are true and correct on and as of the Signing Date and will be true as of the Closing Date, except as otherwise set forth in this Agreement or in the disclosure schedule accompanying this Agreement (the "Company Disclosure Schedule"). From the Signing Date until the Closing Date, the Company shall update the Company Disclosure Schedule, as necessary, so that the

representations and warranties set forth in this Section are true and correct as of the Closing Date, or in the case of representations and warranties that expressly relate to an earlier date, as of such earlier date.

3.1 Organization and Good Standing. The Company is duly formed, validly existing and in good standing under the Laws of Delaware and has all requisite power and authority to conduct the Business as now conducted and to own and operate its assets as now owned and operated by it. The Company is duly qualified or authorized to do business as a foreign company and is in good standing under the laws of each jurisdiction in which it owns or leases real property and each other jurisdiction in which the conduct of its business or the ownership of its assets requires such qualification or authorization, except for such failures to be so qualified or licensed and in good standing that would not individually or in the aggregate expected to have a Company Material Adverse Effect.

3.2 Authorization of Agreement. The Company has all requisite corporate power and authority to execute and deliver this Agreement and each other agreement, document, instrument or certificate contemplated by this Agreement to be executed by the Company in connection with the consummation of the transactions contemplated by this Agreement (collectively with this Agreement, the "Company Documents"), and to consummate the transactions and perform its obligations as contemplated. The execution, delivery and performance of the Company Documents and the consummation of the contemplated transactions have been duly authorized by all requisite corporate action on the part of the Company. This Agreement has been, and each of the other Company Documents will be at or before the Closing, duly and validly executed and delivered by the Company and (assuming the due authorization, execution and delivery by Fresh Vine) this Agreement constitutes, and the each of the other Company Documents will constitute, the legal, valid and binding obligation of the Company, enforceable against it in accordance with its terms subject to the Enforceability Exceptions.

3.3 Conflicts; Consents of Third Parties.

(a) None of the execution, delivery or performance by the Company of the Company Documents, the consummation of the contemplated transactions, or compliance by the Company with any of the provisions will: (i) cause the Company to violate or breach any Law or Order; (ii) conflict with or result in a violation of the Organizational Documents of the Company; (iii) except as set forth on Section 3.3(a) of the Company Disclosure Schedule, conflict with or result in a breach or termination of any of the terms, conditions or provisions of, or constitute a default under, accelerate any obligations arising under, trigger any payment under, require any Consent under or any notice under, result in the creation of any Encumbrance under, or otherwise adversely affect, any Contract to which the Company or any Subsidiary is a party or by which the Company's or any Subsidiary's assets may be bound; or (iv) require the Company or any Subsidiary to make a payment or provide other compensation to any officer, director, employee, consultant or agent of such Person.

(b) Except as set forth on Section 3.3(b) of the Company Disclosure Schedule, no waiver, Order, permit or Consent of any Person or Governmental Authority is required on the part of the Company or its Subsidiaries in connection with the execution and delivery of the Company Documents or the compliance by the Company or its Subsidiaries with any of the provisions, or the consummation of the contemplated transactions.

3.4 Reserved.

3.5 Capitalization.

(a) The authorized capital stock of the Company consists of (i) 125,000,000 shares of common stock, of which 5,043,324 are issued and outstanding and (ii) 100,000,000 shares of preferred stock, 79,454,802 of which are issued and outstanding. The Shares comprise all of the issued and outstanding capital stock of the Company and the Shares are owned by the Holders as set forth on Schedule I, free and clear of all Encumbrances. All of the issued and outstanding Shares were duly authorized for issuance and are validly issued, fully paid and non-assessable, and were issued in compliance with the applicable provisions of the Securities Act, any applicable state "blue sky" or securities law and any other applicable Law. Except for the Shares, there are no other equity securities of the Company outstanding. None of the Shares were issued or will be transferred under this Agreement in violation of any preemptive, preferential or similar rights of any Person. The delivery to Purchaser of the Shares under this Agreement will vest in Purchaser good and valid title to all of the issued and outstanding capital stock of the Company, free and clear of all Encumbrances.

(b) Except as set forth on Schedule 3.5(b), there are not any authorized or outstanding: (i) options, warrants, calls rights of first refusal or other rights of any character to acquire equity or debt interests from the Company or any phantom stock, stock appreciation rights or any other rights intended to provide an economic return based on changes in the value of any debt or equity securities of the Company; (ii) authorized or outstanding equity or debt securities of the Company convertible into or exchangeable for equity or debt securities of the Company; or (iii) rights or options under which the Company is required to or has the right to redeem, purchase or otherwise reacquire any equity securities, or other instrument convertible or exercisable into equity securities, of the Company. The Company is not a party to any voting trust or other Contract with respect to the voting, redemption, sale, transfer or other disposition of the Shares.

(c) Schedule 3.5(c) sets forth each Subsidiary of the Company including its place of jurisdiction and its equity interest which are all owned free and clear of all Encumbrances. All of the issued and outstanding equity or debt securities or other ownership interest in each Subsidiary was duly authorized for issuance and are validly issued, fully paid and non-assessable, and were issued in compliance with the applicable provisions of the Securities Act, any applicable state "blue sky" or securities law and any other applicable Law. None of the equity or debt securities or other ownership interest of any Subsidiary were issued or will be transferred under this Agreement in violation of any preemptive, preferential or similar rights of any Person.

(d) Except as set forth on Schedule 3.5(d), there are not any authorized or outstanding: (i) options, warrants, calls rights of first refusal or other rights of any character to acquire equity or debt interests from of any Subsidiary or any phantom stock, stock appreciation rights or any other rights intended to provide an economic return based on changes in the value of any debt or equity securities of any Subsidiary; (ii) authorized or outstanding equity or debt securities of any Subsidiary convertible into or exchangeable for equity or debt securities of such Subsidiary; or (iii) rights or options under which any Subsidiary is required to or has the right to redeem, purchase or otherwise reacquire any equity securities, or other instrument convertible or exercisable into equity securities, of such Subsidiary. No Subsidiary is party to any voting trust or other Contract with respect to the voting, redemption, sale, transfer or other disposition of the equity or debt securities or other ownership interest of such Subsidiary.

3.6 Financial Statements.

(a) The Company has made available to Fresh Vine true and complete copies of (i) the consolidated audited balance sheet of the Company and its Subsidiaries as of December 31, 2022 and December 31, 2023, and the related audited consolidated statements of operations, cash flows and changes in equity holders' equity of the Company and its Subsidiaries for each of the years then ended, and the unaudited balance sheet of the Company and its Subsidiaries as of for the nine months ended September 30, 2024 and (ii) the related audited consolidated statements of operations, cash flows and changes in equity holders' equity of the Company and its Subsidiaries for the nine months then ended (collectively, the "Company Financials"). The Company Financials described in clause (i) above (x) were prepared in accordance with GAAP and (y) fairly present, in all respects, the financial position of the Company and its Subsidiaries as of the respective dates and the results of operations and cash flows of the Company and its Subsidiaries.

(b) Except as and to the extent set forth on the Company Financials as of the Balance Sheet Date, the Company does not have any other liabilities or obligations of any nature (whether accrued, absolute, contingent or otherwise), except for: (i) liabilities that were incurred in the Ordinary Course of Business since the Balance Sheet Date (and in any event do not relate to breach of contract, tort or noncompliance with Law) or (ii) such other liabilities and obligations which are not, individually or in the aggregate, be expected to have a Company Material Adverse Effect.

(c) Except as set forth on Section 3.6(c) of the Company Disclosure Schedule, the Company and the Subsidiaries do not have any (i) indebtedness for borrowed money or indebtedness issued in substitution or exchange for borrowed money, or (ii) indebtedness evidenced by any note, bond, debenture or other debt security.

(d) Since January 1, 2023, (i) neither the Company nor any of its Subsidiaries nor any director, officer, employee, auditor, accountant or Representative of the Company or any Subsidiary, has received or otherwise had or obtained knowledge of any complaint, allegation, assertion or claim, whether written or, to the Knowledge of the Company, oral, regarding the accounting or auditing practices, procedures, methodologies or methods of the Company or any of its Subsidiaries or their respective internal accounting controls, including any such complaint, allegation, assertion or claim that the Company or any of its Subsidiaries has engaged in questionable accounting or auditing practices and (ii) there have been no internal investigations regarding accounting or revenue recognition discussed with, reviewed by or initiated at the direction of the chief executive officer, chief financial officer, general counsel, the Company Board or any committee.

(e) The respective minute and corporate or company books of the Company and its Subsidiaries, and the books of account and other business records of the Company and each Subsidiaries, all of which have been previously made available to Fresh Vine and its representatives, are accurate and complete in all material respects.

3.7 Absence of Changes; No Undisclosed Liabilities.

(a) Since January 1, 2023, except as set forth on Section 3.7(a) of the Company Disclosure Schedule or as expressly contemplated by this Agreement, (i) the Company and the Subsidiaries have conducted their respective businesses in all respects in the Ordinary Course of Business, (ii) the Company and the Subsidiaries have not sold, assigned, transferred, permitted to lapse, abandoned, or otherwise disposed of any right, title, or interest in or to any of their respective assets (including Company IP Rights) other than revocable non-exclusive licenses (or sublicenses) of Company IP Rights granted in the Ordinary Course of Business, and (iii) there has not been a Company Material Adverse Effect.

(b) Except as set forth on Section 3.7(b) of the Company Disclosure Schedule, the Company and its Subsidiaries have no Liabilities other than: (i) executory obligations or liabilities under Contracts listed on Section 3.11 of the Company Disclosure Schedule or Contracts that are not required to be listed (but not including any Liabilities or obligations arising out of any breach of any Contract), and (ii) Liabilities incurred in connection with the Contemplated Transactions.

3.8 Real Property; Title to Assets

(a) Section 3.8(a) of the Disclosure Schedule lists all leases of real property by the Company and its Subsidiaries (each, a "***Real Property Lease***," and the real property subject to the Real Property Leases being referred to as the "***Leased Real Property***"). The Company does not own any real property. The Leased Real Property comprises all of the real property used in the Business.

(b) Reserved.

(c) With respect to the Leased Real Property: (i) the Company or its Subsidiaries are the owner and holder of all of the leasehold estates purported to be granted by the Real Property Leases; (ii) the Company's or its Subsidiaries' possession and quiet enjoyment of the Leased Real Property has not been disturbed and there are no disputes with respect to such Real Property Leases; (iii) no security deposit or portion deposited with respect to such Real Property Lease has been applied in respect of a breach of or default under such Real Property Lease that has not been redeposited in full.

(d) There are no parties (other than the Company or its Subsidiaries) in possession of any portion of the Leased Real Property.

(e) No portion of the Leased Real Property is subject to any pending condemnation or eminent domain Legal Proceeding or other Legal Proceeding by any Governmental Authority and, to the Knowledge of the Company, there is no threatened condemnation or eminent domain Legal Proceeding or other Legal Proceeding.

(f) The physical condition of the Leased Real Property is free from any defect and sufficient to permit the continued conduct of the Business, as presently conducted, subject to the provision of usual and customary maintenance and repair performed in the ordinary course with respect to similar properties of like age and construction, and no repairs, replacements or regularly scheduled maintenance relating to any of the Leased Real Property has been deferred.

(h) To the Knowledge of the Company, all water, storm and sanitary sewer, gas, electric, telephone and drainage facilities, and all other utilities required by any Law or necessary for the current use and operation of the Leased Real Properties, are installed to the property lines of the Leased Real Properties, are connected under valid permits, if necessary, to municipal or public utility services or proper drainage facilities, are fully operable and are adequate to service the Leased Real Properties as currently used.

(i) To the Knowledge of the Company, the classification of each parcel of Leased Real Property under applicable zoning Laws permits the use and occupancy of such parcel and the operation of the Business as currently conducted. To the Knowledge of the Company, the Company's or its Subsidiaries' use or occupancy of the Leased Real Properties or any portion or the operation of the Business as currently conducted is not dependent on a "permitted non-conforming use" or "permitted non-conforming structure" or similar variance, exemption or approval from any Governmental Authority.

(j) To the Knowledge of the Company, the current use and occupancy of the Leased Real Property and the operation of the Business as currently conducted do not violate any easement, covenant, condition, restriction or similar provision in any instrument of record or other unrecorded agreement affecting such Leased Real Property. The Company has not received any written notice of violation of the foregoing.

3.9 Intellectual Property.

(a) Section 3.9(a) of the Company Disclosure Schedule sets forth a complete and correct list of all Intellectual Property owned by the Company and its Subsidiaries that is subject to any issuance, registration, application or other filing by, to or with any Governmental Authority or authorized private registrar in any jurisdiction (collectively, "***Intellectual Property Registrations***"). All required filings and fees related to the Intellectual Property Registrations have been timely filed with and paid to the relevant Governmental Authorities and authorized registrars, and all Intellectual Property Registrations are otherwise in good standing and are valid and enforceable.

(b) Other than license agreements between the Company and its customers on the Company's standard forms or the Subsidiaries and their customers on such Subsidiaries' standard form, entered into in the Ordinary Course of Business ("***Company Form License Agreements***"), the Company and its Subsidiaries have not granted, transferred or assigned any right or interest in the Intellectual Property to any Person. Except as set forth in Section 3.9(b) of the Company Disclosure Schedule and the Company Form License Agreements, there are no Contracts in effect made by or on behalf of the Company or its Subsidiaries with respect to the marketing, distribution, inbound or outbound licensing or promotion of the Intellectual Property of a third party (including Contracts made by any salesperson, distributor, sublicensor or other remarketer or sales organization, but excluding shrink wrap and similar self-executing licenses). All such Contracts (including the Company Form License Agreements) are valid, binding and enforceable between the Company or its Subsidiaries and, to the Knowledge of the Company, the other parties, and the Company and its Subsidiaries and, to the Knowledge of the Company, such other parties are in full compliance with the terms and conditions of such agreements.

(c) Except as set forth in Section 3.9(c) of the Company Disclosure Schedule: (i) the Company or its Subsidiaries owns and possesses all right, title and interest in and to all owned Intellectual Property, free and clear of all Encumbrances; and (ii) the Company or its Subsidiaries has a valid, enforceable and transferable license to use, all non-owned Intellectual Property used in the operation of the Business.

(d) The Intellectual Property constitutes all proprietary rights reasonably necessary for the operation of the Business. Except as set forth in Section 3.9(d)(i) of the Company Disclosure Schedule, no claim by any third party contesting the validity, enforceability, use or ownership of any of the Intellectual Property has been made or is currently outstanding, and to the Knowledge of the Company, there exists no basis for such claim and the Company has not

received any written notices of and has no Knowledge of any facts that indicate a likelihood of any infringement or misappropriation by, or conflict with, any Person with respect to the Intellectual Property, including any demand or request that the Company and its Subsidiaries license rights from, or make royalty payments to, any Person. To the Knowledge of the Company, the Intellectual Property has not infringed, misappropriated or otherwise conflicted with any proprietary rights of any third parties and the Company has no Knowledge of any infringement, misappropriation or conflict that will occur as a result of the continued operation of the Business consistent with the manner that the Company and its Subsidiaries have previously operated its Business. Except as set forth on Section 3.9(d)(ii) of the Company Disclosure Schedule, to the Knowledge of the Company, no third party is infringing, misappropriating or diluting any intellectual property rights of the Company or its Subsidiaries.

(e) The Company and its Subsidiaries have taken all commercially reasonable actions, measures and precautions to maintain, safeguard and protect all of the Intellectual Property, the Company and its Subsidiaries have taken all steps required by any applicable Law to protect and secure its trade secrets to the extent reasonably necessary under such Law and, there has been no unauthorized release, disclosure or dissemination of any such trade secrets. All personnel, including employees, agents, consultants and contractors, who have contributed to or participated in the conception and development of any Intellectual Property on behalf of the Company and its Subsidiaries either: (i) have been party to a "work for hire" arrangement or agreement with the Company and its Subsidiaries, in accordance with applicable Law, that has accorded the Company or its Subsidiaries, as applicable, full, effective, exclusive and original ownership of all right, title and interest, including all related intellectual property rights; or (ii) have executed appropriate instruments of assignment in favor of the Company or its Subsidiaries as assignee that are separately identified on Section 3.9(e)(ii) of the Company Disclosure Schedule and that have conveyed to the Company or its Subsidiaries, as applicable, full, effective and exclusive ownership of all right, title and interest, including all related intellectual property rights, copies of which have been previously provided to Fresh Vine.

(f) The Company and its Subsidiaries have not and no other Person then acting on its behalf has, disclosed, delivered or licensed to any Person, agreed to disclose, deliver or license to any Person, or permitted the disclosure or delivery to any escrow agent or other Person of, any Company source code, except for disclosures to employees, contractors or consultants under binding written agreements that prohibit use or disclosure other than in the performance of services to the Company and its Subsidiaries. No event has occurred, and no circumstance or condition exists, that (with or without notice or lapse of time, or both) would reasonably be expected to result in the disclosure, delivery or license by the Company and its Subsidiaries or, any Person then acting on its behalf to any Person of any Company source code.

(g) All software that is used by the Company and its Subsidiaries is free from any defect or programming or documentation error, including major bugs, logic errors or failures of such software to currently operate as described in the related documentation, and substantially conforms to the specifications of such software. To the Knowledge of the Company, the software used by the Company and its Subsidiaries do not contain any "back door," "time bomb," "Trojan horse," "worm," "drop dead device," "virus" (as these terms are commonly used in the computer software industry), or other software routines or hardware components intentionally designed to permit unauthorized access, to disrupt, disable or erase software, hardware or data, or to perform any other similar type of unauthorized activities.

(h) All information or data of any kind possessed by the Company and its Subsidiaries, including but not limited to, information that is individual and identifiable to any consumer and collected from consumers or customers ("PII"), aggregate or anonymous information collected from consumers or customers ("Non-PII") and employee data (together with the PII and Non-PII, "Data"), has been collected by the Company or its Subsidiaries, or obtained from any other Person, in compliance with applicable Laws in all material respects. Further, all Data is being maintained, stored, processed and used by it in compliance with applicable Laws in all material respects. The Company and its Subsidiaries have presented a privacy policy, as updated from time to time ("Privacy Policy"), to consumers or customers at the time of its collection of any PII or Non-PII from consumers or customers through its services offered as part of its businesses. The Company and its Subsidiaries have each operated its businesses consistent with the Privacy Policy and any other references to their respective Data collection and use practices contained in marketing materials and advertisements of the Company and its Subsidiaries. All such references regarding its Data collection and use practices have accurately and, as applicable and required under the context, described the Company's or its Subsidiaries' respective information collection practices in all material respects and no such notices or disclosures have been materially inaccurate, misleading or deceptive under applicable Law. To the Knowledge of the Company, (i) the Company has not received any written notices from any Governmental Authority that its or its Subsidiaries' collection, possession or use of PII or Non-PII is inconsistent with or a violation of its applicable Privacy Policy or otherwise constitutes a deceptive or misleading trade practice; (ii) the Company and its Subsidiaries have not collected or received any PII from children under the age of 13 in violation of applicable Law or who have self-identified or otherwise provided information that would reasonably identify them to the Company or its Subsidiaries as under the age of 13 without verifiable parental consent, or directed any of its websites to children under the age of 13 through which such PII could be obtained. The Company and its Subsidiaries use commercially reasonable technical measures consistent with relevant industry practice to store and maintain all Data to protect against unauthorized access to or use of the Data. Subject to applicable Law, the Company and its Subsidiaries have the unrestricted right to use the Data, free and clear of all Encumbrances.

(i) To the Knowledge of the Company, there has been no unauthorized use, access to or disclosure of any Data while in the possession of, or under the control of, the Company or its Subsidiaries. The consummation of the contemplated transactions will not result in any loss or impairment of the rights to own and use any Data, nor will such consummation require the consent of any third party in respect of any Data.

(j) The Intellectual Property licensed by the Company or its Subsidiaries do not contain any software subject to a GNU General Public License, a GNU Library (Lesser) General Public License, or any license containing terms substantially similar to the terms contained in either of the foregoing licenses, specifically including the reciprocity terms applicable to source code for derivative works. The Company and its Subsidiaries have complied with all notice, attribution and other requirements of each such license. The Company and its Subsidiaries have not used any materials subject to such licenses in a manner that does or will require the disclosure or distribution of the source code to any owned Intellectual Property, the license or provision of any owned Intellectual Property on a royalty-free basis, or the grant of any patent license, non-assertion covenant, or other rights under any owned Intellectual Property.

(k) Except as noted on Section 3.9(k) of the Disclosure Schedule, each employee (including leased employees) of the Company and its Subsidiaries, has entered into an agreement related to Intellectual Property developed in connection with the Company or its Subsidiaries.

3.10 Tangible Personal Property.

(a) Except as noted on Section 3.10(a) of the Company Disclosure Schedule: (i) all tangible assets owned or leased by the Company and its Subsidiaries are in the possession of the Company or its Subsidiaries at one of the Company Properties; (ii) such tangible assets are in good operating condition and repair (ordinary wear and tear excepted) and are suitable for the use to which they are put; and (iii) with respect to any tangible assets leased by the Company or its Subsidiaries, such assets are in such condition as to permit the surrender on the Closing Date without any cost or expense for repair or restoration if the related leases were terminated on the Closing Date in the Ordinary Course of Business.

(b) Except as noted on Section 3.10(a) of the Company Disclosure Schedule: The Company and its Subsidiaries own all right, title and interest in and to all of its properties and assets free and clear of any and all Encumbrances.

(c) The properties and assets (tangible and intangible) owned or leased by the Company and its Subsidiaries constitute all of the properties and assets necessary to conduct the Business as previously conducted.

3.11 Agreements, Contracts and Commitments.

(a) The applicable subpart of Section 3.11(a) of the Company Disclosure Schedule sets forth all of the following Contracts to which the Company or its Subsidiaries are a party or by which it or any of its assets is bound (collectively, with the Real Property Leases, the "Company Material Contracts"):

(i) Contracts entered into within the last three (3) years or otherwise having executory obligations on the part of the Company or its Subsidiaries and relating to the acquisition or disposition by the Company or its Subsidiaries of: (A) any business, real property or business segment (whether by merger, consolidation or other business combination, sale of assets or otherwise) or the capital stock of any Person, (B) any of the assets of the Company or its Subsidiaries (other than sales of inventory or the disposition of obsolete equipment, in each case in the ordinary course of business) for consideration in excess of $25,000;

(ii) Contracts relating to the incurrence, assumption or guarantee of any debt;

(iii) any other Contracts (or groups of related Contracts) that are not terminable by the Company or any other Subsidiary without penalty on notice of sixty (60) days or less, which involve the expenditure or receipt of more than $50,000 annually or more than $150,000 over the remaining term;

(iv) Contracts that contain a change of control or other similar provision;

(v) Contracts restricting the ability of the Company or any Subsidiary to operate or compete in any business or with any Person or in any geographic area during any period of time;

(vi) Contracts that require the Company or its Subsidiaries to purchase minimum quantities (or pay any amount for failure to purchase any specific quantities) of goods or services, comply with "take or pay" arrangements, deal with any Person on an exclusive basis, or provide "most favored nations" or similar pricing to any Person;

(vii) Contracts that require the Company or any Subsidiary to indemnify or hold harmless any other Person (other than obligations of the Company or its Subsidiaries to indemnify its customers against third party intellectual property claims contained in the Company Form License Agreements);

(viii) Contracts that provide for any partnership, joint venture, strategic alliance, teaming or similar arrangement;

(ix) Contracts that provide for or relate to any employment or consulting relationship with any Person (other than at-will arrangements), including any stock option, stock purchase, stock appreciation, deferred compensation, severance of other similar equity or equity-like plan or arrangement involving current or former directors, managers, stockholders, officers, or employees;

(x) Contracts under which the Company or any Subsidiary grants or is granted a license of any Intellectual Property (other than Company Form License Agreements and licenses to the Company or its Subsidiaries, as applicable, of commercially available software for total consideration of less than $15,000);

(xi) Contracts with any Governmental Authority, including any settlement, conciliation or similar agreements with any Governmental Authority;

(xii) Contracts granting a power of attorney;

(xiii) Contracts relating to the sales or distributions of the Company's or its Subsidiary's products or services (excluding purchase and sales orders entered into in the ordinary course of business and Company Form License Agreements); and

(xiv) Contracts that are otherwise material to the business, operations or financial condition of the Company or its Subsidiaries and is outside the Company's or its Subsidiary's ordinary course of business;

(b) True, correct and complete copies of all Material Contracts as currently in effect have previously been delivered to Fresh Vine. To the Knowledge of the Company, no other party to a Material Contract has breached, violated or defaulted under any Material Contract and no circumstance exists that, with notice or lapse of time or both (including the Company Merger), would constitute a default by any party. Section 3.11(b) of the Company Disclosure Schedule sets forth summaries containing the terms of all oral Material Contracts.

3.12 Compliance with Laws; Permits.

(a) During the past two (2) years, the Company and its Subsidiaries have complied and are in compliance with all Laws applicable to it. Except as set forth on Section 3.13(a) of the Company Disclosure Schedule, no claims or investigations alleging any violation by the Company and its Subsidiaries of any Laws are pending or threatened.

(b) The Company and its Subsidiaries currently have all material permits which are required for the operation of the Business. The Company has complied at all times in the preceding two (2) years, and is presently in compliance, in all material respects, with the terms and conditions of the material permits. No loss, non-renewal, suspension, modification or expiration of, nor any noncompliance with, any material permit is pending or threatened.

3.13 Litigation.

(a) Except as set forth on Section 3.13(a) of the Company Disclosure Schedule, there are no Legal Proceedings pending or threatened against the Company or its Subsidiaries, or to which the Company is otherwise a party, or otherwise affecting the Company or its Subsidiaries, or that in any manner challenges or seeks, or reasonably could be expected to prevent, enjoin, alter or delay the Company Merger. Section 3.13(a) of the Company Disclosure Schedule also lists all Legal Proceedings threatened against the Company or its Subsidiaries or to which the Company or its Subsidiaries was a party during the past two (2) years.

(b) Section 3.13(b) of the Company Disclosure Schedule describes all claims for indemnification or breach asserted by or against the Company or its Subsidiaries at any time in the past 3 years arising out of the acquisition of any business or business segment.

(c) Except as described on Section 3.13(c) of the Company Disclosure Schedule there are not outstanding Orders that are applicable to, or otherwise affect, the Company or its Subsidiaries.

(d) Section 3.13(d) of the Company Disclosure Schedule lists any settlement agreements to which the Company and its Subsidiaries is a party or by which it is bound.

3.14 Tax Matters. Except as set forth in Section 3.14 of the Company Disclosure Schedules:

(i) The Company and each Subsidiary have timely filed (taking into account all valid extensions) all Tax Returns and reports required to be filed by it, all of which were true, correct and complete. The Company will provide Fresh Vine with copies of such Tax Returns for Company and each Subsidiary filed in or relating to each of the immediately preceding three (3) calendar years before Closing. All Taxes required to be paid by the Company or any Subsidiary have been fully and timely and fully paid, whether or not shown on any such Tax Returns. There are no Encumbrances as a result of any unpaid Taxes upon any of the assets of the Company or its Subsidiaries and the Company has no Knowledge of any information that indicates any such Encumbrance is currently threatened or contemplated to be filed by any Taxing Authority, further, to the Knowledge of the Company, there is no reasonable basis for any such filing whether or not currently contemplated. The Company and each Subsidiaries has set aside adequate reserves for all accrued but unpaid Taxes.

(ii) All Taxes required to be withheld or collected by the Company or its Subsidiaries have been withheld or collected and have been (or will be) duly and timely paid in full to the proper Taxing Authority. All Persons performing services on behalf of the Company and its Subsidiaries have been properly classified by the Company or its Subsidiaries for purposes of Tax reporting and Tax withholding as required by applicable Law. The Company and its Subsidiaries have complied with all applicable Tax recordkeeping requirements.

(iii) No deficiencies for any Taxes have been proposed, asserted or assessed by any Taxing Authority against the Company or its Subsidiaries that are still pending, and to the Knowledge of the Company, no Tax Return of the Company or its Subsidiaries is under current examination by any Taxing Authority.

(iv) No requests for waivers of the time to assess any Taxes have been granted to the Company or its Subsidiaries.

(v) There is no pending written claim by any Taxing Authority of a jurisdiction where the Company or its Subsidiaries have not filed Tax Returns that the Company or its Subsidiaries are subject to taxation in that jurisdiction, and the Company has no Knowledge of any valid basis for such a claim.

(vi) Company and its Subsidiaries are not a party to any Tax sharing agreement and has no Liability for the Taxes of any other Person as a successor, by Contract or otherwise.

(vii) Neither the Company nor its Subsidiaries have received a Tax ruling or entered into a closing or similar agreement with any Taxing Authority that will be binding on the Company or its Subsidiaries after the Closing. The Company and its Subsidiaries have not entered into any agreement with any Taxing Authority, including any Tax allocation, Tax abatement, Tax credit, or payment in lieu of Taxes agreements.

(viii) The Company and its Subsidiaries have not made any payments, and there is no Contract covering any Person that, individually or collectively, could give rise to the payment of any amount (individually or in the aggregate) that would not be deductible by Fresh Vine or the Company or its Subsidiaries by reason of Section 280G of the Code or would subject the recipient to Section 4999 of the Code (or any corresponding provisions of state, local or foreign Tax Law), or that were or will not be deductible under Sections 162 or 404 of the Code.

(ix) The Company and its Subsidiaries have not participated in any “listed transaction” as defined in Section 6707A of the Code or Treasury Regulation Section 1.6011-4(b)(2) or any transaction that is substantially similar to a “listed transaction.”

(x) The Company, its Subsidiaries, the Company Benefit Plans, and, to the Knowledge of the Company, its fiduciaries have not (individually nor collectively) participated in any nonexempt “prohibited transaction” within the meaning of Section 406 of ERISA or Code Section 4975.

(xi) The Company and its Subsidiaries have never been a member of an affiliated, consolidated, combined or unitary group or participated in any other arrangement whereby any income, revenues, receipts, gain or loss was determined or taken into account for Tax purposes with reference to or in conjunction with any income, revenues, receipts, gain, loss, asset or liability of any other Person. The Company and its Subsidiaries have no liability for the Taxes of any Person (other than the Company or its Subsidiaries) under Treasury Regulation Section 1.1502-6 (or any similar provision of state, local or foreign Law), as a transferee or successor, by contract, or otherwise.

(xii) The Company and its Subsidiaries have properly (i) collected and remitted sales and similar Taxes with respect to sales made to its customers and (ii) for all sales that are exempt from sales and similar Taxes and that were made without charging or remitting sales or similar Taxes, received and retained any appropriate Tax exemption certificates and other documentation qualifying such sale as exempt.

(xiii) The Company and its Subsidiaries will not be required to include any item of income in, or exclude any item of deduction from, taxable income for any taxable period (or portion) ending after the Closing Date as a result of any: (i) change in method of accounting for a taxable period ending on or before the Closing Date; (ii) “closing agreement” as described in Section 7121 of the Code (or any corresponding or similar provision of state, local or foreign Law) executed on or before the Closing Date; (iii) installment sale or open transaction disposition made on or before the Closing Date; (iv) prepaid amount received or deferred revenue accrued on or before the Closing Date; (v) use of an improper method of accounting for a taxable period ending on or before the Closing Date; or (vi) election by the Company or its Subsidiaries under Section 108(i) of the Code.

(xiv) The Company and its Subsidiaries is not a party to any Tax sharing, allocation or indemnity agreement, arrangement or similar Contract.

(xv) The Company and its Subsidiaries have not distributed the stock of another Person, or has not had its stock distributed by another Person, in a transaction that was purported or intended to be governed in whole or in part by Sections 355 or 361 of the Code.

(xvi) The Company and its Subsidiaries have never been a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code.

3.15 Labor and Employment Matters.

(a) Section 3.15(a) of the Company Disclosure Schedule lists the name of each employee (including leased employees and employees on an approved leave of absence) and independent contractors of the Company and its Subsidiaries and the date of employment, position, and current annual compensation payable to each such individual. All persons classified as consultants, independent contractors, or other non-employees and all individuals classified as exempt from overtime requirements were, in all material respects and to the Knowledge of the Company, properly classified as such.

(b) Except as set forth on Section 3.15(b) of the Company Disclosure Schedule, the Company and its Subsidiaries are in compliance in all material respects and has not violated the terms and provisions of applicable Laws relating to immigration, including the Immigration Reform and Control Act of 1986, and all related regulations promulgated thereunder (collectively, the “***Immigration Laws***”).

(c) Neither the Company nor any Subsidiary is party to a settlement agreement with a current or former officer, employee or independent contractor resolving allegations of sexual harassment by either an officer, director or employee of the Company or any Subsidiary. There are no, and since January 1, 2023, there have not been, any Legal Proceedings pending or threatened, against the Company or any Subsidiary, in each case, involving allegations of sexual harassment by any employee of the Company or any Subsidiary in a managerial or executive position.

(d) No employee of the Company or its Subsidiaries is represented by a labor union and there are no Contracts with any labor union or association representing any employees of the Company or its Subsidiaries. No petition has been filed or other proceedings instituted by an employee or group of employees with any labor relations board seeking recognition of a bargaining representative; and, to the Knowledge of the Company, there is no organizational effort currently being made or threatened by, or on behalf of, any labor union to organize any employees, and no demand for recognition of employees has been made by, or on behalf of, any labor union.

3.16 Employee Benefit Plans.

(a) Section 3.16 of the Company Disclosure Schedule lists each “employee benefit plan” (as defined in ERISA) and any other material plan, Contract or policy providing bonuses, profit sharing benefits, retirement benefits, pension benefits, compensation, deferred compensation, stock options, phantom stock, stock appreciation rights, stock purchase rights, fringe benefits severance, salary continuation, or other termination payments, post-retirement health and welfare benefits, scholarships, health and welfare benefits, basic and supplemental disability benefits, life insurance coverage, sick leave pay, vacation pay, commissions, payroll practices, retention payments or other benefits (each such plan, Contract, policy, fund or arrangement is referred to as a “***Company Benefit Plan***”) that the Company or its Subsidiaries sponsors or has or could have material Liability with respect to, or has or could have any obligation to contribute to for the benefit of current or former employees, directors, or any other Person performing services for the Company or its Subsidiaries.

(b) The Company and its Subsidiaries have no voluntary benefit plans available to employees which are considered to be exempt from ERISA under DOL Regulation Section 2510.3-1(j). The Company and its Subsidiaries have no Company Benefit Plan that is a “nonqualified deferred compensation plan” (as defined in Code Section 409A(d)(1)).

(c) Each Company Benefit Plan maintained, contributed to or required to be contributed to by the Company or its Subsidiaries have been administered in all material respects in accordance with its terms and with the applicable provisions of ERISA, the Code (including the rules and regulations thereunder) and all other applicable Laws. All contributions, deferrals, premiums and benefit payments under or in connection with the Company Benefit Plans that are required to have been made as of the Closing will have been (or will be) timely made or accrued according to GAAP. The Company, its Subsidiaries, and each Company Benefit Plan complies in all material respects with the applicable provisions of the Health Insurance Portability and Accountability Act of 1996, as amended, and the Patient Protection and Affordable Care Act, as amended, including any applicable notice and/or disclosure requirements.

(d) The Company does not have any Company Benefit Plans that are an "employee pension benefit plan" (as defined in Section 3(2) of ERISA) that is intended to be tax qualified under Section 401(a) of the Code and each retirement plan covered under Section 408 of the Code.

(e) The Company and its ERISA Affiliates do not currently maintain, contribute to or participate in, nor at any time have any of them had an obligation to maintain, contribute to, or otherwise participate in any employee benefit plans that are "multiemployer plans" (within the meaning of Section 3(37) of ERISA or Code Section 414(f)), "multiple employer plans" (within the meaning of Code Section 413(c)), plans that are subject to the provisions of Title IV of ERISA, or a welfare plan that is a "multiple employer welfare arrangement" (within the meaning of Section 3(40) of ERISA).

(f) Each of the Company and its ERISA Affiliates, each Company Benefit Plan and each Company Benefit Plan "sponsor" or "administrator" (within the meaning of Section 3(16) of ERISA) has complied in all material respects with the applicable requirements of Section 4980B of the Code and Section 601 et seq. of ERISA (such statutory provisions and predecessors are referred to collectively as "COBRA") and any comparable state Law. Section 3.16(f) of the Company Disclosure Schedule lists the name of each covered employee who has experienced a "Qualifying Event" (as defined in COBRA) with respect to any Company Benefit Plan for purposes of "Continuation Coverage" (as defined in COBRA) and whose maximum period for continuation coverage required by COBRA or state Law has not expired. Section 3.16(f) of the Company Disclosure Schedule also lists the name of each covered employee who is on leave of absence (paid or unpaid) and whether such person is eligible for continuation coverage.

(g) Each Company Benefit Plan satisfies in all material respects, the requirements of the Patient Protection and Affordable Care Act and the issued regulations and guidance ("PPACA"), such that there is no reasonable expectation that any Tax or penalty could be imposed under the PPACA that relates to such group health plan. No condition exists that could cause the Company or any Company Subsidiary or ERISA Affiliate to have any Liability for any assessable payment under Section 4980H of the Code. No event has occurred or condition exists that could subject the Company or any Company Subsidiary or ERISA Affiliate to any Liability on account of a violation of the health care requirements of Part 6 or 7 of Title I of ERISA or Section 4980B or 4980D of the Code.

(h) The Company has the requisite power to amend and/or terminate each Company Benefit Plan without prior notice or approval. The consummation of the Contemplated Transactions will not give rise to any Liability for any employee benefits. Except as set forth on Schedule 3.16(h), No Company Benefit Plan provides for post-employment benefits of any kind whatsoever (other than under COBRA, the Federal Social Security Act or any Company Benefit Plan qualified under Section 401(a) of the Code) to any former director or employee of, or other provider of services to, the Company or an ERISA Affiliate (or a beneficiary of any such Person), nor have any representations, agreements, covenants or commitments been made to provide such benefits.

3.17 Reserved.

3.18 Insurance. All insurance policies pertaining to the Business are in full force and effect on the Signing Date. Excluding insurance policies that have expired and been replaced in the ordinary course of business, no insurance policy has been cancelled or not renewed within the last two (2) years and, to the Knowledge of the Company, no threat has been made to cancel or not renew any insurance policy of the Company or its Subsidiaries. The Company has delivered to Fresh Vine: (i) all material insurance claims history during the past two (2) years; and (ii) a to the Knowledge of the Company, a list of all pending insurance claims. None of the insurers under any such insurance policies has rejected the defense or coverage of any claim purported to be covered by such insurer or has reserved the right to reject the defense or coverage of any claim purported to be covered by such insurer. To the Knowledge of the Company, neither the Company nor its Subsidiaries have any Liability for retrospective premium adjustments under any insurance policies.

3.19 SEC Filings. The information supplied by Company and its Subsidiaries in writing specifically for inclusion in the SEC Filings shall not contain any untrue statement of a material fact or omit to state any material fact required to be stated or necessary in order to make the statements, in light of the circumstances under which they were made, not misleading.

3.20 Reserved.

3.21 Interested Party Transactions. Except as set forth in Section 3.21 of the Company Disclosure Schedule and for employment relationships and the payment of compensation, benefits and expense reimbursements and advances in the ordinary course of the Company's business, no director, officer or other affiliate of the Company or any Subsidiary has or has had, directly or indirectly (i) an economic interest in any person that has furnished or sold, or furnishes or sells, services or Products that the Company or any Subsidiary furnishes or sells, or proposes to furnish or sell; (ii) an economic interest in any person that purchases from or sells or furnishes to, the Company or any Subsidiary, any goods or services; (iii) a beneficial interest in any Company Material Contract; or (iv) any contractual or other arrangement with the Company or any Subsidiary, other than customary indemnity arrangements. The Company and the Subsidiaries have not, since January 1, 2024, (a) extended or maintained credit, arranged for the extension of credit or renewed an extension of credit in the form of a personal loan to or for any director or executive officer (or equivalent) of the Company, or (b) modified any term of any such extension or maintenance of credit.

3.22 Independent Investigation. Company has conducted its own independent investigation, review and analysis of the business, results of operations, prospects, condition (financial or otherwise) or assets of Fresh Vine and its Subsidiaries and acknowledges that it has been provided adequate access to the personnel, properties, assets, premises, books and records, and other documents and data of Fresh Vine for such purpose. The Company acknowledges that: (a) in making its decision to enter into this Agreement and to consummate the contemplated transactions, it has relied solely upon its own investigation and the express representations and warranties of Fresh Vine set forth in this Agreement (including the related portions of Fresh Vine Disclosure Schedules) and in any certificate delivered to the Company under this Agreement, and the information provided by or on behalf of Fresh Vine for the Registration Statement; and (b) none of Fresh Vine nor its respective Representatives have made any representation or warranty as to Fresh Vine, or this Agreement, except as expressly set forth in this Agreement (including the related portions of Fresh Vine Disclosure Schedules) or in any certificate delivered to the Company, or with respect to the information provided by or on behalf of Fresh Vine for the Registration Statement.

3.23 No Other Representations or Warranties. The Company acknowledges that, except for the representations and warranties contained in this Agreement, neither Fresh Vine nor any of its Subsidiaries nor any other person on behalf of Fresh Vine or its Subsidiaries makes any express or implied representation or warranty with respect to Fresh Vine or its Subsidiaries or with respect to any other information provided to the Company, stockholders or any of the Company's respective Affiliates in connection with the Contemplated Transactions, and (subject to the express representations and warranties of Fresh Vine set forth in Section 4 (in each case as qualified and limited by the Fresh Vine Disclosure Schedule)) Company nor any of its respective Representatives, members, have relied on any such information (including the accuracy or completeness).

Section 4. Representations and Warranties of Fresh Vine and Merger Sub.

Except as disclosed in the Fresh Vine SEC Documents filed with the SEC before the Signing Date and publicly available on the SEC's Electronic Data Gathering Analysis and Retrieval system or in the disclosure schedule accompanying this Agreement (the "Fresh Vine Disclosure Schedule"), Fresh Vine, Pubco, Company Merger Sub and Purchaser Merger Sub represent and warrant to the Company that the statements contained in this Section are true and correct on and as of the Signing Date and on and as of the Closing Date.

4.1 Due Organization; Subsidiaries.

(a) Each of Fresh Vine and its Subsidiaries (including Merger Sub) is a corporation or limited liability company duly incorporated or formed, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization and has all necessary corporate or limited liability company power and authority (i) to conduct its business in the manner in which its business is currently being conducted, (ii) to own or lease and use its property and assets in the manner in which its property and assets are currently owned or leased and used and (iii) to perform its obligations under all Contracts by which it is bound.

(b) Each of Fresh Vine and its Subsidiaries is licensed and qualified to do business, and is in good standing (to the extent applicable in such jurisdiction), under the laws of all jurisdictions where the nature of its business in the manner in which its business is currently being conducted requires such licensing or qualification other than in jurisdictions where the failure to be so qualified individually or in the aggregate would not be reasonably expected to have a Fresh Vine Material Adverse Effect.

(c) Except as set forth on Section 4.1(c) of the Fresh Vine Disclosure Schedule, Fresh Vine has no Subsidiaries other than Merger Sub and Fresh Vine does not own any capital stock of, or any equity ownership or profit-sharing interest of any nature in, or control directly or indirectly, any other Entity other than Merger Sub. Fresh Vine is not and has not otherwise been, directly or indirectly, a party to, member of or participant in any partnership, joint venture or similar business entity. Fresh Vine has not agreed and is not obligated to make, nor is Fresh Vine bound by any Contract under which it may become obligated to make, any future investment in or capital contribution to any other Entity. Fresh Vine has not, at any time, been a general partner of, and has not otherwise been liable for any of the debts or other obligations of, any general partnership, limited partnership or other Entity.

4.2 Organizational Documents. Fresh Vine will deliver to the Company accurate and complete copies of Fresh Vine's Organizational Documents. Fresh Vine is not in breach or violation of its Organizational Documents in any material respect.

4.3 Authority; Binding Nature of Agreement. Each of Fresh Vine and Merger Sub has all necessary corporate power and authority to enter into and to perform its obligations under this Agreement and to consummate the Contemplated Transactions. The Fresh Vine Board (at meetings duly called and held) has (a) determined that the Contemplated Transactions are fair to, advisable and in the best interests of Fresh Vine and its stockholders, and (b) approved and declared advisable this Agreement, the other Transaction Documents and the Contemplated Transactions. The board of Merger Sub have (by unanimous written consent): (x) determined that the Contemplated Transactions are fair to, advisable, and in the best interests of Merger Sub, (y) deemed advisable and approved this Agreement and the Contemplated Transactions and (z) determined to recommend, upon the terms and subject to the conditions set forth in this Agreement, that Merger Sub vote to adopt this Agreement and approve the Contemplated Transactions. This Agreement has been duly executed and delivered by Fresh Vine and Merger Sub and, assuming the due authorization, execution and delivery by the Company, constitutes the legal, valid and binding obligation of Fresh Vine, and Merger Sub, enforceable against each of Fresh Vine, and Merger Sub in accordance with its terms, subject to the Enforceability Exceptions.

4.4 Non-Contravention; Consents.

(a) Subject to compliance with the HSR Act and any foreign antitrust Law, and the filing of the Certificate of Merger required by the DGCL, neither (x) the execution, delivery or performance of this Agreement by Fresh Vine or Merger Sub, nor (y) the consummation of the Contemplated Transactions, will directly or indirectly (with or without notice or lapse of time):

(i) contravene, conflict with or result in a violation of any of the provisions of the Organizational Documents of Fresh Vine or its Subsidiaries;

(ii) contravene, conflict with or result in a material violation of, or give any Governmental Authority or other Person the right to challenge the Contemplated Transactions or to exercise any remedy or obtain any relief under, any Law or any Order to which Fresh Vine or its Subsidiaries or any of the assets owned or used by Fresh Vine or its Subsidiaries, is subject to;

(iii) contravene, conflict with or result in a material violation of any of the terms or requirements of, or give any Governmental Authority the right to revoke, withdraw, suspend, cancel, terminate or modify, any Governmental Authorization that is held by Fresh Vine or its Subsidiaries or that otherwise relates to the business of Fresh Vine, or any of the assets owned, leased or used by Fresh Vine;

(iv) contravene, conflict with or result in a violation or breach of, or result in a default under, any provision of any Fresh Vine Material Contract, or give any Person the right to: (A) declare a default or exercise any remedy under any Fresh Vine Material Contract, (B) any material payment, rebate, chargeback, penalty or change in delivery schedule under any such Fresh Vine Material Contract, (C) accelerate the maturity or performance of any Fresh Vine Material Contract or (D) cancel, terminate or modify any term of any Fresh Vine Material Contract, except in the case of any nonmaterial breach, default, penalty or modification; or

(v) result in the imposition or creation of any Encumbrance upon or with respect to any asset owned or used by Fresh Vine or its Subsidiaries (except for Permitted Encumbrances).

(b) Except for (i) any Consent set forth on Section 4.4 of the Fresh Vine Disclosure Schedule under any Fresh Vine Contract, (ii) the filing of the Certificate of Merger with the Secretary of State of the State of Delaware under the DGCL (iii) any filings required by the NYSE American, (iv) the filing of the Series D Certificate with the Secretary of State of the State of Nevada, (v) any required filings under the HSR Act and any foreign antitrust Law and (vi) such consents, waivers, approvals, orders, authorizations, registrations, declarations and filings as may be required under applicable federal and state securities laws, neither Fresh Vine nor any of its Subsidiaries was, is or will be required to make any filing with or give any notice to, or to obtain any Consent from, any Person in connection with (x) the execution, delivery or performance of this Agreement or (y) the consummation of the Contemplated Transactions.

(c) The Fresh Vine Board and the board of Merger Sub have taken and will take all actions necessary to ensure that the restrictions applicable to business combinations contained in Section 203 of the DGCL are, and will be, inapplicable to the execution, delivery and performance of this Agreement and to the consummation of the Contemplated Transactions. No other state takeover statute or similar Law applies or purports to apply to the Mergers, this Agreement or any of the other Contemplated Transactions.

4.5 Capitalization.

(a) The outstanding capital stock of Fresh Vine consists of (i) 16,713,389 shares of Fresh Vine Common Stock, (ii) 9,330 shares of Series A convertible preferred stock, par value $0.001 per share, and (iii) 49,750 shares of Series B convertible preferred stock, par value $0.001 per share. Fresh Vine does not hold any shares of its capital stock in its treasury.

(b) All of the outstanding shares of Fresh Vine Common Stock have been duly authorized and validly issued, and are fully paid and nonassessable and are free of any Encumbrances (other than Permitted Encumbrances). None of the outstanding shares of Fresh Vine Common Stock is entitled or subject to any preemptive right, right of participation, right of maintenance or any similar right. None of the outstanding shares of Fresh Vine Common Stock is subject to any right of first refusal in favor of Fresh Vine. There is no Fresh Vine Contract relating to the voting or registration of, or restricting any Person from purchasing, selling, pledging or otherwise disposing of (or granting any option or similar right with respect to), any shares of Fresh Vine Common Stock. Fresh Vine is not under any obligation, nor is Fresh Vine bound by any Contract under which it may become obligated, to repurchase, redeem or otherwise acquire any outstanding shares of Fresh Vine Common Stock or other securities. Section 4.5(b) of the Fresh Vine Disclosure Schedule accurately and completely describes all repurchase rights held by Fresh Vine with respect to shares of Fresh Vine Common Stock (including shares issued under the exercise of stock options) and specifies which of those repurchase rights are currently exercisable.

(c) Except for the Fresh Vine 2021 Equity Incentive Plan, (the "Fresh Vine Stock Plan"), and except as further set forth on Section 4.5(c) of the Fresh Vine Disclosure Schedule, Fresh Vine does not have any stock option plan or any other plan, program, agreement or arrangement providing for any equity-

based compensation for any Person. Section 4.5(c) of the Fresh Vine Disclosure Schedule sets forth the following information with respect to each Fresh Vine Option outstanding as of the Signing Date, as applicable: (i) the name of the holder, (ii) the number of shares of Fresh Vine Common Stock subject to such Fresh Vine Option at the time of grant, (iii) the number of shares of Fresh Vine Common Stock subject to such Fresh Vine Option as of the Signing Date, (iv) the exercise price of such Fresh Vine Option, (v) the date on which such Fresh Vine Option was granted, (vi) the applicable vesting schedule, including any acceleration provisions and the number of vested and unvested shares as of the Signing Date, (vii) the date on which such Fresh Vine Option expires, (viii) whether such Fresh Vine Option is intended to be an "incentive stock option" (as defined in the Code) or a nonqualified stock option, (ix) in the case of a Fresh Vine Option, the plan under which such Fresh Vine Option was granted and (x) the number of shares remain available for future issuance under the Fresh Vine Stock Plans. Fresh Vine has made available to the Company accurate and complete copies of equity incentive plans under Fresh Vine has equity-based awards, the forms of all award agreements evidencing such equity-based awards and evidence of board and stockholder approval of the Fresh Vine Stock Plans and any amendments.

(d) Except for the outstanding Fresh Vine Options as set forth on Section 4.5(d) of the Fresh Vine Disclosure Schedule and except as disclosed in the Fresh Vine SEC Documents, there is no: (i) outstanding subscription, option, call, warrant or right (whether or not currently exercisable) to acquire any shares of the capital stock or other securities of Fresh Vine, (ii) outstanding security, instrument or obligation that is or may become convertible into or exchangeable for any shares of the capital stock or other securities of Fresh Vine, or (iii) stockholder rights plan (or similar plan commonly referred to as a "poison pill") or Contract under which Fresh Vine is or may become obligated to sell or otherwise issue any shares of its capital stock or any other securities. There are no outstanding or authorized stock appreciation, phantom stock, profit participation or other similar rights with respect to Fresh Vine.

(e) All outstanding shares of Fresh Vine Common Stock, Fresh Vine Options, and other securities of Fresh Vine have been issued and granted in compliance with (i) all applicable securities Laws and other applicable Law and (ii) all requirements set forth in applicable Contracts.

(f) With respect to Fresh Vine Options granted under the Fresh Vine Stock Plans, (i) each grant of a Fresh Vine Option was duly authorized no later than the date on which the grant of such Fresh Vine Option was by its terms to be effective (the "Fresh Vine Grant Date") by all necessary corporate action, including, as applicable, approval by the Fresh Vine Board (or a duly constituted and authorized committee) and any required stockholder approval by the necessary number of votes or written consents, and the award agreement governing such grant (if any) was duly executed and delivered by each party, (ii) each Fresh Vine Option grant was made in accordance with the terms of the Fresh Vine Stock Plan under which it was granted and all other applicable Law and regulatory rules or requirements, and (iii) the per share exercise price of each Fresh Vine Option was not less than the fair market value of a share of Fresh Vine Common Stock on the applicable Fresh Vine Grant Date.

4.6 SEC Filings; Financial Statements.

(a) Except as set forth on Section 4.6(a) of the Fresh Vine Disclosure Schedule, since January 1, 2024, Fresh Vine has filed or furnished, as applicable, on a timely basis all material forms, statements, certifications, reports and documents required to be filed or furnished by it with the SEC under the Exchange Act or the Securities Act (the "Fresh Vine SEC Documents"). As of the time it was filed with the SEC (or, if amended or superseded by a filing before the Signing Date, then on the date of such filing), each of the Fresh Vine SEC Documents complied in all material respects with the applicable requirements of the Securities Act or the Exchange Act (as the case may be) and as of the time they were filed, none of the Fresh Vine SEC Documents contained any untrue statement of a material fact or omitted to state a material fact required to be stated or necessary in order to make the statements, in light of the circumstances under which they were made, not misleading. The certifications and statements required by (i) Rule 13a-14 under the Exchange Act and (ii) 18 U.S.C. §1350 (Section 906 of the Sarbanes-Oxley Act) relating to the Fresh Vine SEC Documents (collectively, the "Certifications") are accurate and complete and comply as to form and content with all applicable Laws. As used in this Section 4.6, the term "file" and variations shall be broadly construed to include any manner in which a document or information is furnished, supplied or otherwise made available to the SEC.

(b) The financial statements (including any related notes) contained or incorporated by reference in the Fresh Vine SEC Documents: (i) complied as to form in all material respects with the Securities Act and the Exchange Act, as applicable, and the published rules and regulations of the SEC applicable, (ii) were prepared in accordance with GAAP (except as may be indicated in the notes to such financial statements or, in the case of unaudited financial statements, as permitted by Form 10-Q of the SEC, and except that the unaudited financial statements may not contain footnotes and are subject to normal and recurring year-end adjustments that are not reasonably expected to be material in amount) applied on a consistent basis throughout the periods indicated and (iii) fairly present, in all material respects, the financial position of Fresh Vine as of the respective dates and the results of operations and cash flows of Fresh Vine for the periods covered. Other than as expressly disclosed in the Fresh Vine SEC Documents filed before the Signing Date, there has been no material change in Fresh Vine's accounting methods or principles that would be required to be disclosed in Fresh Vine's financial statements in accordance with GAAP. The books of account and other financial records of Fresh Vine and each of its Subsidiaries are true and complete in all material respects.

(c) Except as set forth on Section 4.6(c) of the Fresh Vine Disclosure Schedule, Fresh Vine maintains a system of internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act) that is sufficient to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP, including policies and procedures sufficient to provide reasonable assurance (i) that Fresh Vine maintains records that in reasonable detail accurately and fairly reflect Fresh Vine's transactions and dispositions of assets, (ii) that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP, (iii) that receipts and expenditures are made only in accordance with authorizations of management and the Fresh Vine Board and (iv) regarding prevention or timely detection of the unauthorized acquisition, use or disposition of Fresh Vine's assets that could have a material effect on Fresh Vine's financial statements. Fresh Vine has evaluated the effectiveness of Fresh Vine's internal control over financial reporting and, to the extent required by applicable Law, presented in any applicable Fresh Vine SEC Document that is a report on Form 10-K or Form 10-Q (or any amendment) its conclusions about the effectiveness of the internal control over financial reporting as of the end of the period covered by such report or amendment based on such evaluation. Fresh Vine has disclosed to Fresh Vine's auditors and the audit committee of the Fresh Vine Board (and made available to the Company a summary of the significant aspects of such disclosure) (A) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting that are reasonably likely to adversely affect Fresh Vine's ability to record, process, summarize and report financial information and (B) any fraud, whether or not material, that involves management or other employees who have a significant role in Fresh Vine's or its Subsidiaries' internal control over financial reporting. Except as disclosed in the Fresh Vine SEC Documents filed before the Signing Date, Fresh Vine's internal control over financial reporting is effective and Fresh Vine has not identified any material weaknesses in the design or operation of Fresh Vine's internal control over financial reporting.

4.7 Absence of Undisclosed Liabilities. Neither Fresh Vine nor any of its Subsidiaries has any Liability of a type required to be reflected or reserved for on a balance sheet prepared in accordance with GAAP, except for: (a) Liabilities disclosed, reflected or reserved against in the Fresh Vine Unaudited Interim Balance Sheet, (b) normal and recurring current Liabilities that have been incurred by Fresh Vine or its Subsidiaries since the date of the Fresh Vine Unaudited Interim Balance Sheet in the ordinary course of business (none of which relates to any breach of contract, breach of warranty, tort, infringement, or violation of Law), (c) Liabilities for performance of obligations of Fresh Vine or any of its Subsidiaries under Fresh Vine Contracts, (d) Liabilities incurred in connection with the Contemplated Transactions and (e) Liabilities described in Section 4.7 of the Fresh Vine Disclosure Schedule.

4.8 Compliance; Permits; Restrictions.

(a) Fresh Vine and each of its Subsidiaries is, and since January 1, 2024, has been in material compliance with all applicable Laws. No investigation, claim, suit, proceeding, audit, Order, or other action by any Governmental Authority is pending or, to the Knowledge of Fresh Vine, threatened against Fresh Vine or any of its Subsidiaries. There is no agreement or Order binding upon Fresh Vine or any of its Subsidiaries which (i) has or would reasonably be expected to have the effect of prohibiting or materially impairing any business practice of Fresh Vine or any of its Subsidiaries, any acquisition of material property by Fresh Vine or any of its Subsidiaries or the conduct of business by Fresh Vine or any of its Subsidiaries as currently conducted, (ii) is reasonably

likely to have an adverse effect on Fresh Vine's ability to comply with or perform any covenant or obligation under this Agreement or (iii) is reasonably likely to have the effect of preventing, delaying, making illegal or otherwise interfering with the Contemplated Transactions.

(b) Each of Fresh Vine and its Subsidiaries holds all required Governmental Authorizations that are material to the operation of the business of Fresh Vine and Merger Sub as currently conducted (collectively, the "Fresh Vine Permits"). Each of Fresh Vine and its Subsidiaries is in material compliance with the terms of the Fresh Vine Permits. No Legal Proceeding is pending or, to the Knowledge of Fresh Vine, threatened, which seeks to revoke, substantially limit, suspend, or materially modify any Fresh Vine Permit.

4.9 Legal Proceedings; Orders.

(a) Except as set forth in the Fresh Vine Disclosure Schedule, there is no pending Legal Proceeding and, to the Knowledge of Fresh Vine, no Person has threatened in writing to commence any Legal Proceeding: (i) that involves Fresh Vine or any of its Subsidiaries or any Fresh Vine Associate (in his or her capacity as such) or any of the material assets owned or used by Fresh Vine or any of its Subsidiaries or (ii) that challenges, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with, the Contemplated Transactions.

(b) There is no Order to which Fresh Vine or any of its Subsidiaries, or any of the material assets owned or used by Fresh Vine or any of its Subsidiaries is subject. To the Knowledge of Fresh Vine, no officer or other Key Employee of Fresh Vine or any of its Subsidiaries is subject to any Order that prohibits such officer or employee from engaging in or continuing any conduct, activity or practice relating to the business of Fresh Vine or any of its Subsidiaries or to any material assets owned or used by Fresh Vine or any of its Subsidiaries.

4.10 Tax Matters.

(a) Each of Fresh Vine and each of its Subsidiaries has timely filed all income Tax Returns and all other material Tax Returns required to be filed under applicable Law. All such Tax Returns were true, correct and complete in all material respects and have been prepared in material compliance with all applicable Law. Subject to exceptions as would not be material, no claim has been made by a Governmental Authority in a jurisdiction where Fresh Vine or any of its Subsidiaries does not file Tax Returns that Fresh Vine or any of its Subsidiaries is subject to taxation by that jurisdiction.

(b) All material amounts of Taxes due and owing by Fresh Vine and each of its Subsidiaries (whether or not shown on any Tax Return) have been timely paid. The unpaid Taxes of Fresh Vine and each of its Subsidiaries for periods (or portions) ending on or before the date of the Fresh Vine Unaudited Interim Balance Sheet do not materially exceed the accruals for current Taxes set forth on the Fresh Vine Unaudited Interim Balance Sheet. Since the date of the Fresh Vine Unaudited Interim Balance Sheet, neither Fresh Vine nor any of its Subsidiaries has incurred any material Liability for Taxes outside the ordinary course of business or otherwise inconsistent with past custom and practice.

(c) Each of Fresh Vine and each of its Subsidiaries has withheld and paid to the appropriate Governmental Authority all material Taxes required to have been withheld and paid in connection with any amounts paid or owing to any employee, independent contractor, creditor, stockholder, or other third party.

(d) There are no Encumbrances for material Taxes (other Encumbrances described in clause (a) of the definition of "Permitted Encumbrances") upon any of the assets of Fresh Vine or any of its Subsidiaries.

(e) No deficiencies for a material amount of Taxes with respect to Fresh Vine or any of its Subsidiaries have been claimed, proposed or assessed by any Governmental Authority in writing that have not been timely paid in full. There are no pending (or, based on written notice, threatened) material audits, examinations assessments or other actions for or relating to any liability in respect of Taxes of Fresh Vine or any of its Subsidiaries. Neither Fresh Vine nor any of its Subsidiaries has waived any statute of limitations in respect of material Taxes or agreed to any extension of time with respect to a material Tax assessment or deficiency.

(f) Neither Fresh Vine nor any of its Subsidiaries is a party to any Tax allocation, Tax sharing or similar agreement (including indemnity arrangements), other than Ordinary Course Agreements.

(g) Neither Fresh Vine nor any of its Subsidiaries has been a member of an affiliated group filing a consolidated U.S. federal income Tax Return (other than a group the common parent of which is Fresh Vine). Neither Fresh Vine nor any of its Subsidiaries has any material Liability for the Taxes of any Person (other than Fresh Vine or its Subsidiaries) under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local, or foreign law), as a transferee or successor, by Contract (other than an Ordinary Course Agreement) or otherwise.

(h) Neither Fresh Vine nor any of its Subsidiaries has distributed stock of another Person, or has had its stock distributed by another Person, in a transaction that was purported or intended to be governed in whole or in part by Section 355 of the Code or Section 361 of the Code.

(i) Neither Fresh Vine nor any of its Subsidiaries has entered into any transaction identified as a "reportable transaction" for purposes of Treasury Regulations Sections 1.6011-4(b)(2) or 301.6111-2(b)(2).

(j) Neither Fresh Vine nor any of its Subsidiaries will be required to include any item of income in, or exclude any item of deduction from, taxable income for any taxable period (or portion) ending after the Closing Date as a result of any: (i) change in, or use of improper, method of accounting for a taxable period ending on or before the Closing Date; (ii) "closing agreement" as described in Section 7121 of the Code (or any corresponding or similar provision of state, local or foreign income Tax law) executed on or before the Closing Date; (iii) installment sale or open transaction disposition made on or before the Closing Date; (iv) prepaid amount, advance payments or deferred revenue received or accrued on or before the Closing Date other than in respect of such amounts reflected in the Fresh Vine Balance Sheet or received in the ordinary course of business since the date of the Fresh Vine Balance Sheet; or (v) intercompany transaction or excess loss amount described in Treasury Regulations under Section 1502 of the Code (or any corresponding or similar provision of state, local or foreign income Tax Law).

(k) Neither Fresh Vine nor any of its Subsidiaries is aware of any facts or circumstances or has knowingly taken or agreed to take any action, in each case, that would reasonably be expected to prevent or impede the Mergers from qualifying for the Intended Tax Treatment.

4.12 Employee and Labor Matters; Benefit Plans.

(a) Section 4.12(a) of the Fresh Vine Disclosure Schedule sets forth, for each current Fresh Vine Associate who is an employee of Fresh Vine or any of its Subsidiaries, such employee's name, employer, title, hire date, location, whether full- or part-time, whether active or on leave (and, if on leave, the expected return), whether exempt from the Fair Labor Standards Act, annual salary and wage rate, most recent annual bonus received and current annual bonus opportunity. Section 4.12(a) of the Fresh Vine Disclosure Schedule separately sets forth, for each current Fresh Vine Associate who is an individual independent contractor engaged by Fresh Vine or any of its Subsidiaries, such contractor's name, duties and rate of compensation. No Key Employee has indicated to Fresh Vine or any of its Subsidiaries that he or she intends to resign or retire as a result of the transactions contemplated by this Agreement or otherwise.

(b) The employment of Fresh Vine's employees is terminable by Fresh Vine at will. Fresh Vine has made available to the Company accurate and complete copies of all employee manuals and handbooks, disclosure materials, policy statements and other materials relating to the employment of Fresh Vine Associates to the extent currently effective and material.

(c) Fresh Vine is not a party to, bound by the terms of, and does not have a duty to bargain under, any collective bargaining agreement or other Contract with a labor organization representing any of its employees, and there are no labor organizations representing or, to the Knowledge of Fresh Vine, purporting to represent or seeking to represent any employees of Fresh Vine.

(d) Section 4.12(d) of the Fresh Vine Disclosure Schedule lists all Fresh Vine Employee Plans (other than employment arrangements which are terminable "at will" without any contractual obligation on the part of Fresh Vine or any of its Subsidiaries to make any severance, termination, change in control or similar payment and that are substantively identical to the employment arrangements made available to the Company).

(e) Each Fresh Vine Employee Plan that is intended to be qualified under Section 401(a) of the Code has received a favorable determination or opinion letter with respect to such qualified status from the IRS. To the Knowledge of Fresh Vine, nothing has occurred that would reasonably be expected to adversely affect the qualified status of any such Fresh Vine Employee Plan or the exempt status of any related trust.

(f) Each Fresh Vine Employee Plan has been established, maintained and operated in compliance, in all material respects, with its terms all applicable Law, including, without limitation, the Code, ERISA and the Affordable Care Act. No Legal Proceeding (other than those relating to routine claims for benefits) is pending or, to the Knowledge of Fresh Vine, threatened with respect to any Fresh Vine Employee Plan. All payments and/or contributions required to have been made with respect to all Fresh Vine Employee Plans either have been made or have been accrued in accordance with the terms of the applicable Fresh Vine Employee Plan and applicable Law.

(g) Neither Fresh Vine nor any of its ERISA Affiliates maintains, contributes to or is required to contribute to, or has, in the past six (6) years, maintained, contributed to, or been required to contribute to (i) any "employee benefit plan" that is or was subject to Title IV or Section 302 of ERISA or Section 412 of the Code, (ii) a Multiemployer Plan, (iii) any funded welfare benefit plan within the meaning of Section 419 of the Code, (iv) any Multiple Employer Plan, or (v) any Multiple Employer Welfare Arrangement. Neither Fresh Vine nor any of its ERISA Affiliates has ever incurred any liability under Title IV of ERISA.

(h) No Fresh Vine Employee Plan provides for medical or other welfare benefits to any service provider beyond termination of service or retirement, other than (1) under COBRA or an analogous state law requirement or (2) continuation coverage through the end of the month in which such termination or retirement occurs. Fresh Vine does not sponsor or maintain any self-funded medical or long-term disability benefit plan.

(i) No Fresh Vine Employee Plan is subject to any law of a foreign jurisdiction outside of the United States.

(j) Each Fresh Vine Employee Plan that constitutes in any part a "nonqualified deferred compensation plan" (as such term is defined under Section 409A(d)(1) of the Code and the guidance) (each, a "409A Plan") has been operated and maintained in all material respects in operational and documentary compliance with the requirements of Section 409A of the Code and the applicable guidance. No payment to be made under any 409A Plan is or, when made in accordance with the terms of the 409A Plan, will be subject to the penalties of Section 409A(a)(1) of the Code.

Fresh Vine is in material compliance with all applicable federal, state and local laws, rules and regulations respecting employment, employment practices, terms and conditions of employment, worker classification, tax withholding, prohibited discrimination, harassment, equal employment, fair employment practices, meal and rest periods, immigration status, employee safety and health, wages (including overtime wages), compensation, and hours of work, and in each case, with respect to the employees of Fresh Vine: (i) has withheld and reported all material amounts required by law or by agreement to be withheld and reported with respect to wages, salaries and other payments to employees, (ii) is not liable for any arrears of wages, severance pay or any Taxes or any penalty for failure to comply with any of the foregoing and (iii) is not liable for any material payment to any trust or other fund governed by or maintained by or on behalf of any Governmental Authority, with respect to unemployment compensation benefits, social security or other benefits or obligations for employees (other than routine payments to be made in the ordinary course of business). There are no actions, suits, claims or administrative matters pending or, to the Knowledge of Fresh Vine, threatened or reasonably anticipated against Fresh Vine relating to any employee, independent contractor, director, employment agreement or Fresh Vine Employee Plan (other than routine claims for benefits). To the Knowledge of Fresh Vine, there are no pending or threatened or reasonably anticipated claims or actions against Fresh Vine, any Fresh Vine trustee or any trustee of any Subsidiary under any workers' compensation policy or long-term disability policy. Fresh Vine is not a party to a conciliation agreement, consent decree or other agreement or Order with any federal, state, or local agency or Governmental Authority with respect to employment practices.

(h) Fresh Vine has no material liability with respect to any misclassification within the past four (4) years of (i) any Person as an independent contractor rather than as an employee, (ii) any employee leased from another employer or (iii) any employee currently or formerly classified as exempt from overtime wages. Fresh Vine has not taken any action which would constitute a "plant closing" or "mass layoff" within the meaning of the WARN Act or similar state or local law, issued any notification of a plant closing or mass layoff required by the WARN Act or similar state or local law (nor has Fresh Vine been under any requirement or obligation to issue any such notification), or incurred any liability or obligation under WARN or any similar state or local law that remains unsatisfied.

(i) Fresh Vine is not, nor has Fresh Vine been, engaged in any unfair labor practice within the meaning of the National Labor Relations Act. There is no Legal Proceeding, claim, labor dispute or grievance pending or, to the Knowledge of Fresh Vine, threatened or reasonably anticipated relating to any employment contract, privacy right, labor dispute, wages and hours, leave of absence, plant closing notification, workers' compensation policy, long-term disability policy, harassment, retaliation, immigration, employment statute or regulation, safety or discrimination matter involving any Fresh Vine Associate, including charges of unfair labor practices or discrimination complaints.

(j) There is no contract, agreement, plan or arrangement to which Fresh Vine or any of its Subsidiaries is a party or by which it is bound to compensate any of its employees for excise taxes paid under the Code, including, but not limited to, Section 4999 or Section 409A of the Code.

(k) Neither Fresh Vine nor any of its Subsidiaries is a party to any Contract that as a result of the execution and delivery of this Agreement, nor the consummation of the Contemplated Transactions, could (either alone or in conjunction with any other event) (i) result in the payment of any "parachute payment" within the meaning of Section 280G of the Code or (ii) result in, or cause the accelerated vesting, payment, funding or delivery of, or increase the amount or value of, any payment or benefit to any employee, officer, director or other service provider of Fresh Vine or any of its Subsidiaries.

4.13 Transactions with Affiliates. Except as set forth in the Fresh Vine SEC Documents filed before the Signing Date, since the date of Fresh Vine's last proxy statement filed in 2023 with the SEC, no event has occurred that would be required to be reported by Fresh Vine under Item 404 of Regulation S-K promulgated by the SEC. Section 4.13 of the Fresh Vine Disclosure Schedule identifies each Person who is (or who may be deemed to be) an Affiliate of Fresh Vine as of the Signing Date.

4.14 No Financial Advisors. Except as set forth on Section 4.14 of the Fresh Vine Disclosure Schedule, no broker, finder or investment banker is entitled to any brokerage fee, finder's fee, opinion fee, success fee, transaction fee or other fee or commission in connection with the Contemplated Transactions based upon arrangements made by or on behalf of Fresh Vine.

4.15 Valid Issuance. The Fresh Vine Common Stock and Fresh Vine Series D Convertible Preferred Stock to be issued as Merger Consideration will, when issued in accordance with the provisions of this Agreement, be validly issued, fully paid and nonassessable.

4.16 SEC Filings. The information supplied by Fresh Vine and its Subsidiaries, in writing specifically for inclusion in the SEC Filings shall not contain any untrue statement of a material fact or omit to state any material fact required to be stated or necessary in order to make the statements, in light of the circumstances under which they were made, not misleading.

4.17 Independent Investigation. Fresh Vine has conducted its own independent investigation, review and analysis of the business, results of operations, prospects, condition (financial or otherwise) or assets of the Company and its Subsidiaries and acknowledges that it has been provided adequate access to the personnel, properties, assets, premises, books and records, and other documents and data of the Company for such purpose. Fresh Vine acknowledges that: (a) in making its decision to enter into this Agreement and to consummate the contemplated transactions, it has relied solely upon its own

investigation and the express representations and warranties of Company set forth in this Agreement (including the related portions of Company Disclosure Schedules) and in any certificate delivered to Fresh Vine under this Agreement, and the information provided by or on behalf of Company for the Registration Statement; and (b) none of Company nor its Representatives have made any representation or warranty as to the Company, or this Agreement, except as expressly set forth in this Agreement (including the related portions of Company Disclosure Schedules) or in any certificate delivered to Fresh Vine, or with respect to the information provided by or on behalf of Company for the Registration Statement.

4.18 No Fresh Vine Vote or Approval Required. Except for the approval by Fresh Vine stockholders of the issuance of greater than 20% of the outstanding shares of Common Stock and the resulting change of control of Fresh Vine in accordance with the NYSE American Rules, no vote or consent of the holders of any capital stock of, or other equity or voting interest in, Fresh Vine is necessary to approve this Agreement and the Contemplated Transactions. The vote or consent of Fresh Vine, as the sole stockholder of Merger Sub, is the only vote or consent of the capital stock of, or other equity interest in, Merger Sub necessary to approve this Agreement and the Merger Transactions.

4.19 No Other Representations or Warranties. Fresh Vine acknowledges that, except for the representations and warranties contained in this Agreement, neither the Company nor any of its Subsidiaries nor any other person on behalf of the Company or its respective Subsidiaries makes any express or implied representation or warranty with respect to the Company or its respective Subsidiaries or with respect to any other information provided to Fresh Vine or Merger Sub or any of their respective Representatives or stockholders or any of their respective Affiliates in connection with the Contemplated Transactions, and (subject to the express representations and warranties of the Company set forth in Section 3 (in each case as qualified and limited by the Company Disclosure Schedule)) none of Fresh Vine or Merger Sub nor any of their respective Representatives or stockholders, has relied on any such information (including the accuracy or completeness).

Section 5. Reserved

Section 6. Additional Agreements of the Parties.

6.1 Reserved.

6.2 Reserved.

6.3 Reserved.

6.4 Directors. Prior to the Fresh Vine Stockholders Meeting, until successors are duly elected or appointed and qualified in accordance with applicable Law, the Parties shall use commercially reasonable efforts and take all necessary action so that Aaron Day is elected or appointed, as applicable, to the position of director of Fresh Vine, to serve in such positions effective as of the Effective Time. Prior to the Fresh Vine Stockholder Meeting, Fresh Vine shall take all commercially reasonable actions necessary to increase the size of its Board to such number of directors allow both Aaron Day and Pete Deutschman to be included as director nominees at the Fresh Vine Stockholders Meeting as permitted by the rules and authorities of the NYSE American.

6.5 Employee Benefits. As expeditiously as reasonably practical following approval of the Fresh Vine Stockholders Matters at the Fresh Vine Stockholder Meeting, Fresh Vine shall grant to the individuals listed on Section 6.5 of the Company Disclosure Schedule who are eligible participants under the Fresh Vine Employee Plan on the grant date, stock options, stock appreciation rights ("SARs"), or other form of equity incentive compensation that may be granted under the Fresh Vine Employee Plan, representing up to an aggregate grant date value of $5,000,000 worth of Fresh Vine Common Stock, determined by multiplying (x) the total number of shares, option shares or SARs granted by (y) the greater of (i) the last sale price or exercise price (as applicable) of a share of Fresh Vine Common Stock on the grant date, or (ii) Fifty cents ($0.50) per share, subject to the approval of the Fresh Vine Board in its discretion, the terms of the award agreements, and the Fresh Vine Employee Plan. Section 6.5 of the Company Disclosure Schedule sets forth the list of employees of the Company entitled to such compensation and the dollar amount of equity compensation each is entitled to.

6.6 Indemnification of Officers and Directors.

(a) From the Effective Time through the sixth anniversary of the date on which the Effective Time occurs, each of Fresh Vine and the Surviving Corporation shall, jointly and severally, indemnify and hold harmless each person who is now, or has been at any time prior to the date hereof, or who becomes prior to the Effective Time, a director or officer of Fresh Vine or the Company, respectively (the "***D&O Indemnified Parties***"), against all claims, losses, liabilities, damages, judgments, fines and reasonable fees, costs and expenses, including attorneys' fees and disbursements (collectively, "***Costs***"), incurred in connection with any claim, action, suit, proceeding or investigation, whether civil, criminal, administrative or investigative, arising out of or pertaining to the fact that the D&O Indemnified Party is or was a director or officer of Fresh Vine or of the Company, whether asserted or claimed prior to, at or after the Effective Time, in each case, to the fullest extent permitted under the applicable Law. Each D&O Indemnified Party will be entitled to advancement of expenses incurred in the defense of any such claim, action, suit, proceeding or investigation from each of Fresh Vine and the Surviving Corporation, jointly and severally, upon receipt by Fresh Vine or the Surviving Corporation from the D&O Indemnified Party of a request therefor; provided that any such person to whom expenses are advanced provides an undertaking to Fresh Vine, to the extent then required by applicable Law, to repay such advances if it is ultimately determined that such person is not entitled to indemnification. Without otherwise limiting the D&O Indemnified Parties' rights with regards to counsel, following the Effective Time, the D&O Indemnified Parties shall be entitled to continue to retain Maslon LLP, Mercer Oak LLC, or such other counsel selected by the D&O Indemnified Parties.

(b) The provisions of the articles of incorporation and bylaws of Fresh Vine with respect to indemnification, advancement of expenses and exculpation of present and former directors and officers of Fresh Vine that are presently set forth in the articles of incorporation and bylaws of Fresh Vine shall not be amended, modified or repealed for a period of six (6) years from the Effective Time in a manner that would adversely affect the rights thereunder of individuals who, at or prior to the Effective Time, were officers or directors of Fresh Vine, unless such modification is required by applicable Law. The articles of incorporation and bylaws of the Surviving Corporation shall contain, and Fresh Vine shall cause the articles of incorporation and bylaws of the Surviving Corporation to so contain, provisions no less favorable with respect to indemnification, advancement of expenses and exculpation of present and former directors and officers as those presently set forth in the articles of incorporation and bylaws of Fresh Vine.

(c) From and after the Effective Time, (i) the Surviving Corporation shall fulfill and honor in all respects the obligations of the Company to its D&O Indemnified Parties as of immediately prior to the Effective Time pursuant to any indemnification provisions under the Company's Organizational Documents and pursuant to any indemnification agreements between the Company and such D&O Indemnified Parties, with respect to claims arising out of matters occurring at or prior to the Effective Time and (ii) Fresh Vine shall fulfill and honor in all respects the obligations of Fresh Vine to its D&O Indemnified Parties as of immediately prior to the Closing pursuant to any indemnification provisions under Fresh Vine's Organizational Documents and pursuant to any indemnification agreements between Fresh Vine and such D&O Indemnified Parties, with respect to claims arising out of matters occurring at or prior to the Effective Time.

(d) From and after the Effective Time, Fresh Vine shall maintain directors' and officers' liability insurance policies, with an effective date as of the Closing Date, on commercially available terms and conditions and with coverage limits customary for U.S. public companies similarly situated to Fresh Vine. In addition, prior to the Effective Time, Fresh Vine shall purchase a six-year prepaid "tail policy" for the non-cancellable extension of the directors' and officers' liability coverage of Fresh Vine's existing directors' and officers' insurance policies for a claims reporting or discovery period of at least six (6) years from and after the Effective Time with respect to any claim related to any period of time at or prior to the Effective Time with terms, conditions, and retentions that are no less favorable than the coverage provided under Fresh Vine's existing policies as of the date of this Agreement, in each case with respect to claims arising out of or relating to events which occurred on or prior to the Effective Time (including in connection with this Agreement and the Contemplated Transactions).

(e) From and after the Effective Time, Fresh Vine shall pay all expenses, including reasonable attorneys' fees, that are incurred by the Persons referred to in this Section 6.7 in connection with their enforcement of the rights provided to such Persons in this Section 6.7.

(f) The provisions of this Section 6.7 are intended to be in addition to the rights otherwise available to the current and former officers and directors of Fresh Vine and the Company by Law, charter, statute, bylaw or agreement, and shall operate for the benefit of, and shall be enforceable by, each of the D&O Indemnified Parties, their heirs and their Representatives.

(g) In the event Fresh Vine or the Surviving Corporation or any of their respective successors or assigns (i) consolidates with or merges into any other Person and shall not be the continuing or surviving corporation or entity of such consolidation or merger or (ii) transfers all or substantially all of its properties and assets to any Person, then, and in each such case, proper provision shall be made so that the successors and assigns of Fresh Vine or the Surviving Corporation, as the case may be, shall succeed to the obligations set forth in this Section 6.7. Fresh Vine shall cause the Surviving Corporation to perform all of the obligations of the Surviving Corporation under this Section 6.7.

6.7 Tax Matters.

(a) For U.S. federal income Tax purposes, the Parties (i) intend that the Merger qualify as a "reorganization" within the meaning of Section 368(a) of the Code (the "Intended Tax Treatment"), and (ii) will not take any actions, or fail to take any action, which action or failure to act would reasonably be expected to prevent or impede the Merger from qualifying for the Intended Tax Treatment. The Parties shall not file any U.S. federal, state or local Tax Return in a manner that is inconsistent with the Intended Tax Treatment, and shall not take any inconsistent position during the course of any audit, litigation or other proceeding with respect to Taxes, in each case, unless otherwise required by a determination within the meaning of Section 1313(a) of the Code.

(b) The Parties acknowledge and agree that each has relied upon the advice of its own tax advisors in connection with the Merger and the Contemplated Transactions and that none of the Company, on the one hand, and Fresh Vine and Merger Sub, on the other hand, makes any representation or warranty as to the Intended Tax Treatment, other than the representations and warranties contained in Sections 3.15(r) and 4.12(k), respectively.

(c) All transfer, documentary, sales, use, stamp, registration, excise, recording, registration value added and other such similar Taxes and fees (including any penalties and interest) that become payable in connection with or by reason of the execution of this Agreement and the transactions contemplated hereby (collectively, "Transfer Taxes") shall be borne and paid by Fresh Vine. Unless otherwise required by applicable law, Fresh Vine shall timely file any Tax Return or other document with respect to such Taxes or fees (and the Company shall reasonably cooperate with respect thereto as necessary).

6.8 Legends. Fresh Vine shall be entitled to place appropriate legends on the book entries and/or certificates evidencing any Merger Consideration issuable to stockholders of the Company who may be considered "affiliates" of Fresh Vine for purposes of Rules 144 and 145 under the Securities Act reflecting the restrictions set forth in Rules 144 and 145, and to place appropriate legends on the book entries and/or certificates representing any Merger Consideration that may otherwise constitute restricted securities under the Securities Act, and to issue appropriate stop transfer instructions to the transfer agent for Fresh Vine Stock.

6.9 Expenses. Except as otherwise described in this Agreement, each of the Company, Fresh Vine and Merger Sub shall bear its own expenses incurred in connection with the negotiation, execution and performance of this Agreement and each other agreement, document and instrument contemplated by this Agreement and the consummation of the Transactions. Fresh Vine and the Surviving Corporation shall be responsible for the attorneys' fees set forth on Section 6.9 of the Company Disclosure Schedules.

6.10. Reserved.

6.11 Section 16 Matters. Prior to the Effective Time, Fresh Vine shall take all such steps as may be required to cause any acquisitions of Fresh Vine Stock and any options to purchase Fresh Vine Common Stock in connection with the Contemplated Transactions, by each individual who is reasonably expected to become subject to the reporting requirements of Section 16(a) of the Exchange Act with respect to Fresh Vine after the Effective Time, to be exempt under Rule 16b-3 promulgated under the Exchange Act.

6.12 Allocation Certificate. The Company will prepare and deliver to Fresh Vine prior to the Closing a certificate signed by the Company in a form reasonably acceptable to Fresh Vine setting forth (as of immediately prior to the Effective Time) (a) each Holder entitled to receive Merger Consideration (b) such Holder's name and email address, (c) the amount and class or series of Company Preferred Stock held as of the Closing Date for each such Holder and (d) the number of shares of Fresh Vine Series D Convertible Preferred Stock and the number of Merger Warrants to be issued to such Holder as Merger Consideration pursuant to this Agreement (the "***Allocation Certificate***").

6.13 Obligations of Merger Sub. Fresh Vine will take all actions necessary to cause Merger Sub to perform its obligations under this Agreement and to consummate the Merger on the terms and conditions set forth in this Agreement.

6.14 Prohibition on Short Sales. Neither the Company, nor any of its officers and directors have engaged in any "Short Sales" of Fresh Vine Common Stock prior to the date of this Agreement, and neither the Company nor any affiliate thereof will engage in any transactions involving any Short Sales involving any securities of Fresh Vine prior to the Effective time. For purposes hereof, "Short Sales" include, without limitation, all "short sales" as defined in Rule 200 promulgated under Regulation SHO under the Exchange Act.

6.15 Employment Matters. Fresh Vine covenants and agrees to assume the rights and obligations of the Company under the existing employment agreements between the Company and its current Chief Executive Officer and Chief Financial Officer (the "***Current Amaze Executives***"), and to keep such individuals employed in their current respective roles with the Company in accordance with the terms of their employment agreements and Fresh Vine's written code of conduct after Closing. Further, Fresh Vine agrees to consider such Current Amaze Executives as candidates for senior and executive leadership roles at Fresh Vine, as such roles may become available after the Closing.

6.16 Approval of Stockholder Matters.

(a) As promptly as practicable after the date of this Agreement, Fresh Vine, with the reasonable cooperation of the Surviving Corporation, shall prepare and cause to be filed with the SEC a proxy statement (the "***Proxy Statement***") related to the solicitation of votes to approve, among other matters, (i) the issuance of shares of Fresh Vine Common Stock in excess of the Common Stock Limit, (ii) the authorization of additional shares of Fresh Vine Common Stock under the Amended and Restated Certificate of Incorporation, (iii) the authorization of additional shares of Fresh Vine Common Stock for issuance pursuant to the Fresh Vine Employee Plan, and (iv) the election of the Fresh Vine director nominees, including Aaron Day, and after successfully using all commercially reasonable efforts in accordance with Section 6.4 above, to include Pete Deutschman as well, to the Board of Directors of Fresh Vine to serve until his or their successors are duly elected or appointed and qualified in accordance with applicable Law (collectively, the "***Fresh Vine Stockholder Matters***") at the Fresh Vine Stockholder Meeting. Fresh Vine shall take all action necessary under applicable Law to call, give notice of and hold a meeting of the Fresh Vine stockholders for the purpose of conducting an annual meeting and seeking approval of the Fresh Vine Stockholder Matters (the "***Fresh Vine Stockholder Meeting***"). Fresh Vine will use its reasonable best efforts to have the preliminary Proxy Statement cleared by the SEC as promptly as reasonably practicable after such filing, and Fresh Vine will use its reasonable best efforts to cause the Proxy Statement to be mailed to Fresh Vine stockholders as promptly as reasonably practicable after the SEC notifies Fresh Vine that the preliminary Proxy Statement will not be reviewed or that the SEC staff has no further comments thereon. The Fresh Vine Stockholder Meeting shall be held as promptly as reasonably practicable after the Proxy Statement is cleared by the SEC. Fresh Vine shall take reasonable measures to ensure that all proxies solicited in connection with the Fresh Vine Stockholder Meeting are solicited in compliance with all applicable Law. Notwithstanding anything to the contrary contained herein, if on the date of the Fresh Vine Stockholder Meeting, or a date preceding the date on which the Fresh Vine Stockholder Meeting is scheduled, Fresh Vine reasonably believes that (i) it will not receive proxies sufficient to obtain the

Required Fresh Vine Stockholder Vote, whether or not a quorum would be present or (ii) it will not have sufficient shares of Fresh Vine Common Stock represented (whether in person or by proxy) to constitute a quorum necessary to conduct the business of the Fresh Vine Stockholder Meeting, Fresh Vine may postpone or adjourn, or make one or more successive postponements or adjournments of, the Fresh Vine Stockholder Meeting.

(b) Fresh Vine agrees that, (i) the Fresh Vine Board shall recommend that the holders of Fresh Vine Common Stock vote to approve the Fresh Vine Stockholder Matters and shall use commercially reasonable efforts to solicit such approval within ninety (90) days after the Proxy Statement is cleared by the SEC; (ii) the Proxy Statement shall include a statement to the effect that the Fresh Vine Board recommends that Fresh Vine's stockholders vote to approve the Fresh Vine Stockholder Matters (the recommendation of the Fresh Vine Board being referred to as the "***Fresh Vine Board Recommendation***"); and (iii) the Fresh Vine Board Recommendation shall not be withdrawn or modified (and the Fresh Vine Board shall not publicly propose to withdraw or modify the Fresh Vine Board Recommendation).

6.17 Resale Registration Statement. As promptly as practicable after the date the Proxy Statement is cleared by the SEC, Fresh Vine, with the reasonable cooperation of the Surviving Corporation, shall prepare and file with the SEC the Resale Registration Statement, in connection with the registration for resale under the Securities Act of the shares of Fresh Vine Common Stock issued or issuable pursuant to this Agreement as Merger Consideration, including upon conversion of the Fresh Vine Series D Convertible Preferred Stock and the exercise of the Merger Warrants. Each of Fresh Vine and the Surviving Corporation shall use their commercially reasonable efforts to cause the Resale Registration Statement to become effective as promptly as practicable, and shall take all or any action required under any applicable federal, state, securities and other applicable Laws in connection with the registration of the shares of Fresh Vine Common Stock issued or issuable upon conversion or exercise of the Merger Consideration. Each of the Parties shall furnish all information concerning itself and its Affiliates, as applicable, to the other Parties as the other Parties may reasonably request in connection with such actions and the preparation of the Resale Registration Statement.

6.18 Listing. Fresh Vine shall use its commercially reasonable efforts: (a) to maintain its existing listing on NYSE American immediately following the Effective Time; and (b) to the extent required by the rules and regulations of NYSE American, to prepare and submit to NYSE American a supplemental listing application for the listing of the shares of Fresh Vine Common Stock issued or issuable pursuant to this agreement as Merger Consideration, including upon conversion of the Fresh Vine Series D Convertible Preferred Stock and the exercise of the Merger Warrants.

Section 7. Conditions Precedent to Obligations of Each Party. The obligations of each Party to effect the Merger and otherwise consummate the Contemplated Transactions to be consummated at the Closing are subject to the satisfaction or, to the extent permitted by applicable Law, the written waiver by each of the Parties, at or prior to the Closing, of each of the following conditions:

7.1 No Restraints. No temporary restraining order, preliminary or permanent injunction or other Order preventing the consummation of the Contemplated Transactions shall have been issued by any court of competent jurisdiction or other Governmental Authority of competent jurisdiction and remain in effect and there shall not be any Law which has the effect of making the consummation of the Contemplated Transactions illegal.

7.2 Stockholder Approval. The Company shall have obtained the Required Company Stockholder Vote.

7.3 No Company Material Adverse Effect. There shall not have occurred any Company Material Adverse Effect.

7.4 No Fresh Vine Material Adverse Effect. There shall not have occurred any Fresh Vine Material Adverse Effect.

7.5 Dissenters Rights. No holders of Company Common Stock outstanding immediately prior to the Effective Time shall be Dissenting Shares that have validly exercised or remain entitled to exercise appraisal rights for such Company Common Stock in accordance with Section 262 of the DGCL.

Section 8. Closing Deliveries of the Company.

8.1 Documents. Fresh Vine shall have received the following documents, each of which shall be in full force and effect:

(a) this Agreement, duly executed by the Company, each Holder representing more than a majority of the outstanding voting power of the Company, and the Holders' Representative;

(b) executed Merger Certificate;

(c)the Allocation Certificate; and

(d) executed Company Shareholder Consent.

Section 9. Closing Deliveries of Fresh Vine and Merger Sub

9.1 Documents. The Company shall have received the following documents, each of which shall be in full force and effect:

(a) this Agreement, duly executed by Fresh Vine and Merger Sub;

(b) executed Merger Certificate;

(c) the executed Fresh Vine Stockholder Support Agreements representing twenty-five percent (25%) of the outstanding voting power of Fresh Vine;

(d) the executed Lock Up Agreements, signed by all executive officers and directors of Fresh Vine; and

(e) executed consent of the Board of Directors of Fresh Vine to the transactions contemplated by this Agreement.

Section 10. Miscellaneous Provisions.

10.1 Non-Survival of Representations and Warranties; Survival of Covenants. The representations and warranties of the Company, Fresh Vine and Merger Sub contained in this Agreement or any certificate or instrument delivered pursuant to this Agreement shall terminate at the Effective Time. Each covenant or other agreement of any Party contained herein which by its terms requires performance after the Closing (the "***Surviving Covenants***") shall survive the Closing until fully performed in accordance with its terms and nothing in this Agreement shall be deemed to limit any rights or remedies of any Person for breach of any such covenant or other agreement.

10.2 Amendment. This Agreement may be amended with the approval of the respective boards of directors of the Company, Merger Sub (or Surviving Corporation, as applicable) and Fresh Vine after the Effective Time; provided, however, that after any such approval of this Agreement by a Party's Stockholder, no amendment shall be made which by Law requires further approval of such Stockholder without the further approval of such Stockholder. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the Company, Merger Sub (or Surviving Corporation, as applicable) and Fresh Vine.

10.3 Waiver.

(a) No failure on the part of any Party to exercise any power, right, privilege or remedy under this Agreement, and no delay on the part of any Party in exercising any power, right, privilege or remedy under this Agreement, shall operate as a waiver of such power, right, privilege or remedy; and no

single or partial exercise of any such power, right, privilege or remedy shall preclude any other or further exercise thereof or of any other power, right, privilege or remedy.

(b) Any provision hereof may be waived by the waiving Party solely on such Party's own behalf, without the consent of any other Party. No Party shall be deemed to have waived any claim arising out of this Agreement, or any power, right, privilege or remedy under this Agreement, unless the waiver of such claim, power, right, privilege or remedy is expressly set forth in a written instrument duly executed and delivered on behalf of such Party and any such waiver shall not be applicable or have any effect except in the specific instance in which it is given.

10.4 Entire Agreement; Counterparts; Exchanges by Electronic Transmission or Facsimile. This Agreement and the other Transaction Documents and schedules, exhibits, certificates, instruments and agreements referred to in this Agreement or any other Transaction Document constitute the entire agreement and supersede all prior agreements and understandings, both written and oral, among or between any of the Parties with respect to the subject matter hereof and thereof; provided, however, that the Confidentiality Agreement shall not be superseded and shall remain in full force and effect in accordance with its terms. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. The exchange of a fully executed Agreement (in counterparts or otherwise) by all Parties by facsimile or electronic transmission in .PDF format shall be sufficient to bind the Parties to the terms and conditions of this Agreement.

10.5 Applicable Law; Jurisdiction. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Nevada, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws. In any action or proceeding between any of the Parties arising out of or relating to this Agreement or any of the Contemplated Transactions, each of the Parties (a) irrevocably and unconditionally consents and submits to the exclusive jurisdiction and venue of the state courts of the State of Nevada sitting in Clark County or the United States District Court for the District of Nevada, (b) agrees that all claims in respect of such action or proceeding shall be heard and determined exclusively in accordance with clause (a) of this Section 10.5, (c) waives any objection to laying venue in any such action or proceeding in such courts, (d) waives any objection that such courts are an inconvenient forum or do not have jurisdiction over any Party, (e) agrees that service of process upon such Party in any such action or proceeding shall be effective if notice is given in accordance with Section 10.7 of this Agreement and (f) irrevocably and unconditionally waives the right to trial by jury.

10.6 Assignability. This Agreement shall be binding upon, and shall be enforceable by and inure solely to the benefit of, the Parties and their respective successors and permitted assigns; provided, however, that neither this Agreement nor any of a Party's rights or obligations hereunder may be assigned or delegated by such Party without the prior written consent of the other Parties, and any attempted assignment or delegation of this Agreement or any of such rights or obligations by such Party without the other Parties' prior written consent shall be void and of no effect. Notwithstanding anything to the contrary herein, it is understood that Surviving Corporation is the successor and a permitted assignee of the Company after the Effective Time, and no further action shall be necessary by the Parties to evidence such action.

10.7 Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly delivered and received hereunder (a) one (1) Business Day after being sent for next Business Day delivery, fees prepaid, via a reputable international overnight courier service, (b) upon delivery in the case of delivery by hand or (c) on the date delivered in the place of delivery if sent by email or facsimile (with a written or electronic confirmation of delivery) prior to 6:00 p.m. (California time), otherwise on the next succeeding Business Day, in each case to the intended recipient as set forth below:

if to Fresh Vine or Merger Sub:

Fresh Vine Wine, Inc.
P.O. Box 78984
Charlotte, NC 28271
Attention: Michael Pruitt
Email: mp@avenelfinancial.com

with a copy to (which shall not constitute notice):
Maslon LLP
225 South Sixth Street
Suite 2900
Minneapolis, MN 55402
Attention: William Mower
Email: bill.mower@maslon.com

if to the Company or the Holders' Representative:
Amaze Software, Inc.
2901 West Coast Highway
Suite 200
Newport Beach, CA 92663
Attention: Aaron Day
Email: aaron@amaze.co

with a copy to (which shall not constitute notice):
Mercer Oak LLC
29 N. Ada Street
Chicago, IL 60607
Attention: Thomas J. Dammrich II
email: tj@merceroaklaw.com

10.8 Cooperation. Each Party agrees to cooperate fully with the other Party and to execute and deliver such further documents, certificates, agreements and instruments and to take such other actions as may be reasonably requested by the other Party to evidence or reflect the Contemplated Transactions and to carry out the intent and purposes of this Agreement.

10.9 Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions of this Agreement or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If a final judgment of a court of competent jurisdiction declares that any term or provision of this Agreement is invalid or unenforceable, the Parties agree that the court making such determination shall have the power to limit such term or provision, to delete specific words or phrases or to replace such term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be valid and enforceable as so modified. In the event such court does not exercise the power granted to it in the prior sentence, the Parties agree to replace such invalid or unenforceable term or provision with a valid and enforceable term or provision that will achieve, to the extent possible, the economic, business and other purposes of such invalid or unenforceable term or provision.

10.10 No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to or shall confer upon any Person (other than the Parties and the D&O Indemnified Parties to the extent of their respective rights pursuant to Section 6.6) any right, benefit or remedy of any nature

whatsoever under or by reason of this Agreement.

10.11 Holders' Representative(a)Appointment. By virtue of the Merger and the adoption of this Agreement, each Holder hereby irrevocably constitutes and appoints Aaron Day as the true and lawful agent and attorney-in-fact of such Holder with full powers of substitution to act in the name, place and stead of thereof with respect to the performance on behalf of such Holder under the terms and provisions of this Agreement and the other Transaction Agreements, as the same may be from time to time amended, and to do or refrain from doing all such further acts and things, and to execute all such documents on behalf of the Holders, if any, as the Holders' Representative will deem necessary or appropriate in connection with any of the transactions contemplated under this Agreement, including to: (i) agree upon or compromise any matter related to the calculation of any adjustments under this Agreement or the other Transaction Agreements; (ii) act for the Holders with respect to all post-Closing matters applicable to the Holders; (iv) amend or waive any provision of this Agreement; (v) employ and obtain at the expense of the Holders the advice of legal counsel, accountants and other professional advisors as the Holders' Representative, in such person's sole discretion, deems necessary or advisable in the performance of duties as the Holders' Representative and to rely on their advice and counsel; (vi) sign any releases or other documents with respect to and dispute or remedy arising under this Agreement or the other Transaction Agreements; and (viii) do or refrain from doing any further act or deed on behalf of the Holders which the Holders' Representative deems necessary or appropriate in his, her or its sole discretion relating to the subject matter of this Agreement as fully and completely as any of the Holders could do if personally present and acting. A decision, act, consent or instruction of the Holders' Representative, shall constitute a decision of the Holders and shall be final, binding and conclusive upon the Holders.

(b) Replacement. If the Holders' Representative shall die, resign, become disabled or otherwise be unable to fulfill his responsibilities hereunder, the Holders shall, within ten calendar days after such death, disability or inability, appoint a successor to the Holders' Representative (who shall be reasonably satisfactory to Fresh Vine) and immediately thereafter notify Fresh Vine of the identity of such successor. Any such successor shall succeed the Holders' Representative as Holders' Representative hereunder. If for any reason there is no Holders' Representative at any time, all references herein to the Holders' Representative shall be deemed to refer to the Holders.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first above written.

FRESH VINE:

FRESH VINE WINE, INC.

By: /s/Michael Pruitt_________
Name: Michael Pruitt
Title: Chief Executive Officer

MERGER SUB:

AMAZE HOLDINGS INC.

By: /s/ Michael Pruitt________
Name: Michael Pruitt
Title: Chief Executive Officer

COMPANY:

AMAZE SOFTWARE INC.

By: /s/ Aaron Day___________
Name: Aaron Day
Title: CEO

HOLDERS' REPRESENTATIVE

/s/ Aaron Day_______________
Aaron Day

EVERPLUS CAPITAL, LLC

By: ____________________________________

Name: Xuesong Yu ________________________

Title: Manager ___________________________

Date: __________________________________

EVERPLUS MANAGEMENT, LLC

By: ____________________________________

Name: Xuesong Yu ________________________

Title: Manager ___________________________

Date: __________________________________

EVERPLUS F&B, LLC

By: ____________________________________

Name: Xuesong Yu ________________________

Title: Manager______________________________

Date: ________________________________

1103 PK, LP

By: ______________________________________

Name: ____________________________________

Title: _____________________________________

Date: _____________________________________

BRADLEY C. KARP AND BELINDA KARP

By: ______________________________________

Date: _____________________________________

By: ______________________________________

Date: _____________________________________

TRIBE CAPITAL FUND III, L.P.

By: Tribe Capital Fund III GP, LLC

Its: General Partner

By: ___________________________________

Name: Arjun Sethi___________________________

Title: Managing Member_____________________

Date: _________________________________

OPAC FAMOUS, LLC

By: ___________________________________

Name: _________________________________

Title: Managing Member______________________

Date: __________________________________

BLUE HAWK, LLC

By: ______________________________________

Name: Jerry Murdock ________________________

Title: Manager _____________________________

Date: ____________________________________

AC 2019 TRUST

By: ______________________________________

Name: Seth Lapidow________________________

Title: Trustee_______________________________

Date: ____________________________________

ACNYC LLC

By: ______________________________________

Name: Andrew Cader_______________________

Title: Manager______________________________

Date: ____________________________________

PACIFIC PREMIER TRUST FBO GORDON RAUSSER ROTH IRA

By: ______________________________________

Name: Gordon Rausser______________________

Title: Investor______________________________

Date: ____________________________________

GORDON RAUSSER REVOCABLE TRUST

By: ______________________________________

Name: Gordon Rausser______________________

Title: Investor______________________________

Date: ____________________________________

THE GORDON RAUSSER FAMILY LP

By: ______________________________________

Name: Gordon Rausser______________________

Title: Investor______________________________

Date: ____________________________________

EXHIBIT A

FORM OF FRESH VINE STOCKHOLDER SUPPORT AGREEMENT

EXHIBIT B

FORM OF LOCK-UP AGREEMENT

Exhibit 10.2

NEITHER THE ISSUANCE AND SALE OF THE SECURITIES REPRESENTED BY THIS WARRANT NOR THE SECURITIES INTO WHICH THESE SECURITIES ARE EXERCISABLE HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR (B) AN OPINION OF COUNSEL TO THE HOLDER (IF REQUESTED BY THE COMPANY), IN A FORM REASONABLY ACCEPTABLE TO THE COMPANY, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR (II) UNLESS SOLD OR ELIGIBLE TO BE SOLD PURSUANT TO RULE 144 OR RULE 144A UNDER SAID ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES. THE NUMBER OF SHARES OF COMMON STOCK ISSUABLE UPON EXERCISE OF THIS WARRANT MAY BE LESS THAN THE AMOUNTS SET FORTH ON THE FACE HEREOF PURSUANT TO SECTION 1(a) OF THIS WARRANT.

FRESH VINE WINE, INC.

WARRANT TO PURCHASE SHARES OF COMMON STOCK

Warrant No.: MW-xxx

Warrant Shares:

Date of Issuance: , 2025 ("Issuance Date")

Fresh Vine Wine, Inc., a company organized under the laws of the State of Nevada (the "**Company**"), hereby certifies that, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, [PURCHASER NAME], the registered holder hereof or its permitted assigns (the "**Holder**"), is entitled, subject to the terms set forth below, to purchase from the Company, at the Exercise Price (as defined below) then in effect, upon exercise of this warrant to purchase shares of Common Stock (including any warrants to purchase shares of Common Stock issued in exchange, transfer or replacement hereof, the "**Warrant**"), at any time or times on or after the Stockholder Approval Date, but not after 11:59 p.m., New York time, on the Expiration Date (as defined below), (subject to adjustment as provided herein) fully paid and non- assessable shares of Common Stock (as defined below) (the "**Warrant Shares**"). Except as otherwise defined herein, capitalized terms in this Warrant shall have the meanings set forth in **Section 18**. This Warrant is being issued pursuant to that certain Amended and Restated Agreement and Plan of Merger, dated as of March 7, 2025 (the "**Subscription Date**"), by and among the Company, Amaze Holdings, Inc., a Delaware corporation and wholly owned subsidiary of the Company ("Merger Sub"), Amaze Software, Inc., a Delaware corporation ("**Amaze**"), the Stockholders of Amaze listed on Schedule I and signatory thereto (each, a "Holder" and together the "Holders"), and Aaron Day, solely in his capacity as the Holders' Representative, as amended from time to time (the "**Merger Agreement**").

1. <u>**Exercise of Warrant.**</u>

(a) **Mechanics of Exercise**. Subject to the terms and conditions hereof (including, without limitation, the limitations set forth in **Section 1(f)**) , this Warrant may be exercised by the Holder on any day on or after the Stockholder Approval Date (an "**Exercise Date**"), in whole or in part, by delivery (whether via facsimile or otherwise) of a written notice, in the form attached hereto as **Exhibit A** (the "**Exercise Notice**"), of the Holder's election to exercise this Warrant. In connection therewith, the Holder shall deliver payment to the Company of an amount equal to the Exercise Price in effect on the date of such exercise multiplied by the number of Warrant Shares as to which this Warrant was so exercised (the "**Aggregate Exercise Price**") in cash or via wire transfer of immediately available funds. The Holder shall not be required to deliver the original of this Warrant in order to affect an exercise hereunder. Execution and delivery of an Exercise Notice with respect to less than all of the Warrant Shares shall have the same effect as cancellation of the original of this Warrant and issuance of a new Warrant evidencing the right to purchase the remaining number of Warrant Shares. Execution and delivery of an Exercise Notice for all of the then-remaining Warrant Shares shall have the same effect as cancellation of the original of this Warrant after delivery of the Warrant Shares in accordance with the terms hereof. On or before the first (1st) Trading Day following the date on which the Company has received an Exercise Notice, the Company shall transmit by facsimile or electronic mail an acknowledgment of confirmation of receipt of such Exercise Notice, in the form attached hereto as **Exhibit B**, to the Holder and the Company's transfer agent (the "**Transfer Agent**"), which confirmation shall constitute an instruction to the Transfer Agent to process such Exercise Notice in accordance with the terms herein. On or before the second (2nd) Trading Day following the date on which the Company has received such Exercise Notice (or such earlier date as required pursuant to the 1934 Act or other applicable law, rule or regulation for the settlement of a trade of such Warrant Shares initiated on the applicable Exercise Date) (the "**Share Delivery Date**"), the Company shall (X) provided that the Transfer Agent is participating in the Depository Trust Company ("**DTC**") Fast Automated Securities Transfer Program, upon the request of the Holder, credit such aggregate number of shares of Common Stock to which the Holder is entitled pursuant to such exercise to the Holder's or its designee's balance account with DTC through its Deposit/Withdrawal at Custodian system, or (Y) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program, upon the request of the Holder, issue and deliver (via reputable overnight courier) to the address as specified in the Exercise Notice, a certificate, registered in the name of the Holder or its designee, for the number of shares of Common Stock to which the Holder shall be entitled pursuant to such exercise. Upon delivery of an Exercise Notice, the Holder shall be deemed for all corporate purposes to have become the holder of record of the Warrant Shares with respect to which this Warrant has been exercised, irrespective of the date such Warrant Shares are credited to the Holder's DTC account or the date of delivery of the certificates evidencing such Warrant Shares (as the case may be). If this Warrant is submitted in connection with any exercise pursuant to this **Section 1(a)** and the number of Warrant Shares represented by this Warrant submitted for exercise is greater than the number of Warrant Shares being acquired upon an exercise and upon surrender of this Warrant to the Company by the Holder, then, at the request of the Holder, the Company shall as soon as practicable and in no event later than three (3) Business Days after any exercise and at its own expense, issue and deliver to the Holder (or its designee) a new Warrant (in accordance with **Section 7(d)**) representing the right to purchase the number of Warrant Shares purchasable immediately prior to such exercise under this Warrant, less the number of Warrant Shares with respect to which this Warrant is exercised. No fractional shares of Common Stock are to be issued upon the exercise of this Warrant, but rather the number of shares of Common Stock to be issued shall be rounded up to the nearest whole number. The Company shall pay any and all stamp, issuance and similar taxes, costs and expenses (including, without limitation, fees and expenses of the Transfer Agent) that may be payable with respect to the issuance and delivery of Warrant Shares upon exercise of this Warrant. Notwithstanding the foregoing, the Company's failure to deliver Warrant Shares to the Holder on or prior to the earlier of ((i) two (2) Trading Days after receipt of the applicable Exercise Notice (or such earlier date as required pursuant to the 1934 Act or other applicable law, rule or regulation for the settlement of a trade of such Warrant Shares initiated on the applicable Exercise Date) and (ii) two (2) Trading Days after the Company's receipt of the Aggregate Exercise Price shall not be deemed to be a breach of this Warrant. From the Issuance Date through and including the Expiration Date, the Company shall maintain a transfer agent that participates in the DTC's Fast Automated Securities Transfer Program

(b) **Exercise Price**. Subject to the terms and conditions hereof, for purposes of this Warrant, the "**Exercise Price**" shall be equal to $0.80, subject to adjustment herein; and in no instance shall the Holder be entitled to exercise this Warrant into such an amount of Common Stock that, together with all shares of Common Stock which have been previously exercised by the Holder, would equal greater than 9.99% of the total issued and outstanding shares of Common Stock of the Company, subject to adjustment as provided herein, including, but not limited to, adjustments for any stock split, stock combination, reclassification or similar transaction that proportionately decreases or increases the Common Stock during such measuring period. The Exercise Price shall be rounded down to the nearest $0.0001.

(c) **Disputes**. In the case of a dispute as to the determination of the Exercise Price or the arithmetic calculation of the number of Warrant Shares to be issued pursuant to the terms hereof, the Company shall promptly issue to the Holder the number of Warrant Shares that are not disputed and resolve such dispute in accordance with **Section 13**.

(d) **Limitations on Exercises.**

(i) **Beneficial Ownership**. The Company shall not effect the exercise of any portion of this Warrant, and the Holder shall not have the right to exercise any portion of this Warrant, pursuant to the terms and conditions of this Warrant and any such exercise shall be null and void and treated as if never made, to the extent that after giving effect to such exercise, the Holder together with the other Attribution Parties collectively would beneficially own in excess of 9.99% (the "**Maximum Percentage**") of the shares of Common Stock outstanding immediately after giving effect to such exercise. For purposes of the foregoing sentence, the aggregate number of shares of Common Stock beneficially owned by the Holder and the other Attribution Parties shall include the number of shares of Common Stock held by the Holder and all other Attribution Parties plus the number of shares of Common Stock issuable upon exercise of this Warrant with respect to which the determination of such sentence is being made, but shall exclude shares of Common Stock which would be issuable upon (A) exercise of the remaining, unexercised portion of this Warrant beneficially owned by the Holder or any of the other Attribution Parties and (B) exercise or conversion of the unexercised or unconverted portion of any other securities of the Company (including, without limitation, any convertible notes or convertible preferred stock or warrants) beneficially owned by the Holder or any other Attribution Party subject to a limitation on conversion or exercise analogous to the limitation contained in this **Section 1(e)(i)**. For purposes of this **Section 1(e)(i)**, beneficial ownership shall be calculated in accordance with Section 13(d) of the 1934 Act. For purposes of determining the number of outstanding shares of Common Stock the Holder may acquire upon the exercise of this Warrant without exceeding the Maximum Percentage, the Holder may, if and as applicable, rely on the number of outstanding shares of Common Stock as reflected in (x) the Company's most recent Annual Report on Form 10-K, Quarterly Report on Form 10-Q, Current Report on Form 8-K or other public filing with the SEC or information provided by the Company, as the case may be, (y) a more recent public announcement by the Company or (z) any other written notice by the Company or the Transfer Agent, if any, setting forth the number of shares of Common Stock outstanding (the "**Reported Outstanding Share Number**"). If the Company receives an Exercise Notice from the Holder at a time when the actual number of outstanding of shares of Common Stock is less than the Reported Outstanding Share Number, the Company shall (i) notify the Holder in writing of the number of shares of Common Stock then outstanding and, to the extent that such Exercise Notice would otherwise cause the Holder's beneficial ownership, as determined pursuant to this **Section 1(e)(i)**, to exceed the Maximum Percentage, the Holder must notify the Company of a reduced number of Warrant Shares to be acquired pursuant to such Exercise Notice (the number of shares by which such purchase is reduced, the "**Reduction Shares**") and (ii) as soon as reasonably practicable, the Company shall return to the Holder any exercise price paid by the Holder for the Reduction Shares. For any reason at any time, upon the written or oral request of the Holder, the Company shall within one (1) Business Day confirm orally and in writing or by electronic mail to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Warrant, by the Holder and any other Attribution Party since the date as of which the Reported Outstanding Share Number was reported. In the event that the issuance of shares of Common Stock to the Holder upon exercise of this Warrant results in the Holder and the other Attribution Parties being deemed to beneficially own, in the aggregate, more than the Maximum Percentage of the number of outstanding shares of Common Stock (as determined under Section 13(d) of the 1934 Act), the number of shares so issued by which the Holder's and the other Attribution Parties' aggregate beneficial ownership exceeds the Maximum Percentage (the "**Excess Shares**") shall be deemed null and void and shall be cancelled ab initio, and the Holder shall not have the power to vote or to transfer the Excess Shares. As soon as reasonably practicable after the issuance of the Excess Shares has been deemed null and void, the Company shall return to the Holder the exercise price paid by the Holder for the Excess Shares. Upon delivery of a written notice to the Company, the Holder may from time to time decrease or subsequently increase (with such increase not effective until the sixty-first (61st) day after delivery of such notice) the Maximum Percentage to any other percentage not in excess of 9.99% as specified in such notice; provided that (i) any such increase in the Maximum Percentage will not be effective until the sixty-first (61st) day after such notice is delivered to the Company and (ii) any such increase or decrease will apply only to the Holder and the other Attribution Parties. For purposes of clarity, the shares of Common Stock issuable pursuant to the terms of this Warrant in excess of the Maximum Percentage shall not be deemed to be beneficially owned by the Holder for any purpose including for purposes of Section 13(d) or Rule 16a-1(a)(1) of the 1934 Act. No prior inability to exercise this Warrant pursuant to this paragraph shall have any effect on the applicability of the provisions of this paragraph with respect to any subsequent determination of exercisability. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this **Section 1(e)(i)** to the extent necessary to correct this paragraph or any portion of this paragraph which may be defective or inconsistent with the intended beneficial ownership limitation contained in this **Section 1(e)(i)** or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitation contained in this paragraph may not be waived and shall apply to a successor holder of this Warrant.

(ii) **[Reserved.]**

(iii) **Exchange Cap**. The Company shall not issue any shares of Common Stock upon the exercise of this Warrant if the issuance of such shares of Common Stock would exceed the "Exchange Share Cap" as defined in the Certificate of Designation.

(e) **Redemption.** If, after 180 days after the Issuance Date, the VWAP for each of 20 consecutive Trading Days equals or exceeds $1.60 per share (subject to adjustment for stock splits, recapitalizations, stock dividends and the like after the Initial Exercise Date), and provided that there is an effective registration statement covering the resale of the Warrant Shares issuable upon exercise of the Warrant, and a current prospectus relating thereto available throughout such consecutive 20-day Trading Day period, then the Company may, at its election, redeem all or a portion of this Warrant, upon delivering the Redemption Notice referred to below, at the price of $0.01 per Warrant (the "**Redemption Price**"). In the event the Company shall elect to redeem all of this Warrant, the Company shall fix a date for the redemption (the "**Redemption Date**"). Notice of redemption (the "**Redemption Notice**") shall be mailed by first class mail, postage prepaid, by the Company not less than thirty (30) days prior to the Redemption Date to the registered holders of the Warrants to be redeemed at their last addresses as they shall appear in the Warrant Register. Any notice mailed in the manner herein provided shall be conclusively presumed to have been duly given whether or not the registered holder received such notice. The Warrants may be exercised, for cash at any time after the Redemption Notice shall have been given by the Company pursuant to this Section 1(e) and prior to the Redemption Date. On and after the Redemption Date, the record holder of the Warrants shall have no further rights except to receive, upon surrender of the Warrants, the Redemption Price.

(f) **Required Reserve Amount**. On or after the Stockholder Approval Date, so long as this Warrant remains outstanding, the Company shall at all times keep reserved for issuance under this Warrant a number of shares of Common Stock at least equal to one hundred percent (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 Warrant then outstanding (without regard to any limitations on exercise) (the "**Required Reserve Amount**"); provided that at no time shall the number of shares of Common Stock reserved pursuant to this **Section 1(g)** be reduced other than proportionally in connection with any exercise of the Warrant or such other event covered by **Section 2(a)** below. The Required Reserve Amount (including, without limitation, each increase in the number of shares so reserved) shall be based on the number of shares of Common Stock issuable upon exercise or conversion of all Securities issued pursuant to the Purchase Agreement, including this Warrant, and held by the Purchaser on the Closing Date (without regard to any limitations on exercise or conversion) or increase in the number of reserved shares, as the case may be. In the event that a holder shall sell or otherwise transfer all or any portion of such holder's Warrant, such Required Reserve Amount requirement shall continue to apply to the number of shares of Common Stock into which such Warrant held by each transferee is exercisable.

(g) **Insufficient Authorized Shares**. If, notwithstanding **Section 1(g)**, and not in limitation thereof, at any time while the Warrant remains outstanding, the Company does not have a sufficient number of authorized and unreserved shares of Common Stock to satisfy its obligation to reserve the Required Reserve Amount (an "**Authorized Share Failure**"), then the Company shall immediately take all action necessary to increase the Company's authorized shares of Common Stock to an amount sufficient to allow the Company to reserve the Required Reserve Amount for such outstanding Warrant. Without limiting the generality of the foregoing sentence, as soon as practicable after the date of the occurrence of an Authorized Share Failure, but in no event later than one hundred -twenty (120) days after the occurrence of such Authorized Share Failure, the Company shall hold a meeting of its stockholders for the approval of an increase in the number of authorized shares of Common Stock. In connection with such meeting, the Company shall provide each stockholder with a proxy statement in accordance with applicable Federal and state securities laws and shall use its best efforts to solicit its stockholders' approval of such increase in authorized shares of Common Stock and to cause its board of directors to recommend to the stockholders that they approve such proposal. In the event that the Company is prohibited from issuing shares of Common Stock upon an exercise of this Warrant due to the failure by the Company to have sufficient shares of Common Stock available out of the authorized but unissued shares of Common Stock (such unavailable number of shares of Common Stock, the "**Authorization Failure Shares**"), in lieu of delivering such Authorization Failure Shares to the Holder, the Company shall pay cash in exchange for the cancellation of such portion of this Warrant exercisable into such Authorization Failure Shares at a price equal to the sum of (i) the product of (x) such number of Authorization Failure Shares and (y) the greatest Closing Sale Price of the shares of Common Stock on any Trading Day during the period commencing on the date the Holder delivers the applicable Exercise Notice with respect to such Authorization Failure Shares to the Company and ending on the date of such issuance and payment under this **Section 1(h)**; and (ii) to the extent the Holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of Authorization Failure Shares, brokerage commissions and other out-of- pocket expenses, if any, of the Holder incurred in connection therewith.

2. **<u>Adjustment of Exercise Price and Number of Warrant Shares</u>**. The Exercise Price and number of Warrant Shares issuable upon exercise of this Warrant are subject to adjustment from time to time as set forth in this **Section 2**.

(a) **Stock Dividends and Splits**. Without limiting any provision of **Section 2(b)**, **Section 3** or **Section 4**, if the Company, at any time on or after the Subscription Date, (i) pays a stock dividend on one or more classes of its then outstanding shares of Common Stock or otherwise makes a distribution on any class of its capital stock that is payable in shares of Common Stock, (ii) subdivides (by any stock split, stock dividend, recapitalization or otherwise) one or more classes of its then outstanding shares of Common Stock into a larger number of shares or (iii) combines (by combination, reverse stock split or otherwise) one or more classes of its then outstanding shares of Common Stock into a smaller number of shares, then in each such case the Exercise Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event. Any adjustment made pursuant to clause (i) of this paragraph shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution, and any adjustment pursuant to clause (ii) or (iii) of this paragraph shall become effective immediately after the effective date of such subdivision or combination. If any event requiring an adjustment under this paragraph occurs during the period that an Exercise Price is calculated hereunder, then the calculation of such Exercise Price shall be adjusted appropriately to reflect such event.

(b) **Adjustment to Exercise Price for Diluting Issues.**

i. **Special Definitions**. For purposes of this Section 2(b) the following definitions shall apply:

(A) "**Additional Shares of Common Stock**" means all shares of Common Stock issued (or, pursuant to Section 2(b)(iii) below, deemed to be issued) by the Corporation after the Original Issue Date (as defined below), other than the following shares of Common Stock and shares of Common Stock deemed issued pursuant to the following Options and Convertible Securities (collectively, "**Exempted Securities**"):

(1) as to any class or series Preferred Stock, shares of Common Stock, Options or Convertible Securities issued as a dividend or distribution on such Preferred Stock;

(2) shares of Common Stock, Options or Convertible Securities issued by reason of a dividend, stock split, split-up or other distribution on shares of Common Stock that is covered by Sections 2(a), 3 and 4);

(3) shares of Common Stock, Options or Convertible Securities issued to banks, equipment lessors or other financial institutions, or to real property lessors, pursuant to a debt financing, equipment leasing or real property leasing transaction approved by the Company's board of directors;

(4) shares of Common Stock or Options issued to employees or directors of, or consultants or advisors to, the Corporation or any of its subsidiaries pursuant to a plan, agreement or arrangement approved (i) prior to the Original Issue Date or (ii) by the Company's board of directors;

(5) shares of Common Stock or Convertible Securities actually issued upon the exercise of Options or shares of Common Stock actually issued upon the conversion or exchange of Convertible Securities, in each case provided such issuance is pursuant to the terms of such Option or Convertible Security;

(6) shares of Common Stock, Options or Convertible Securities issued to suppliers or third party service providers in connection with the provision of goods or services pursuant to transactions approved by the Company's board of directors;

(7) shares of Common Stock, Options or Convertible Securities issued as acquisition consideration pursuant to the acquisition of another corporation by the Company by merger, purchase of substantially all of the assets or other reorganization or

business combination (including the Business Combination Agreement) or to a joint venture agreement, provided that such issuances are approved by the Company's board of directors; or

(8) shares of Common Stock, Options or Convertible Securities issued in connection with sponsored research, collaboration, technology license, development, OEM, marketing or other similar agreements or strategic partnerships approved by the Company' s board of directors; or

(9) shares of Common Stock, Options or Convertible Securities issued for capital-raising purposes in connection with the transactions contemplated by the Merger Agreement, including but not limited to issuances of any new class or series of preferred stock of the Company in a PIPE transcatoion, as approved by the Company's board of directors.

(B) "**Convertible Securities**" means any evidences of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for Common Stock, but excluding Options.

(C) "**Option**" means any rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities.

(D) "**Original Issue Date**" means the date on which the first Warrant is issued

ii**.** **No Adjustment of Exercise Price**. No adjustment in the Exercise Price shall be made as the result of the issuance or deemed issuance of Additional Shares of Common Stock if the Company receives written notice from the holders of a majority in interest of the Warrants then outstanding, agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common Stock.

iii. **Deemed Issue of Additional Shares of Common Stock**.

(A) If the Company at any time or from time to time after the Original Issue Date shall issue any Options or Convertible Securities (excluding Options or Convertible Securities which are themselves Exempted Securities) or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares of Common Stock (as set forth in the instrument relating thereto, assuming the satisfaction of any conditions to exercisability, convertibility or exchangeability but without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date.

(B) If the terms of any Option or Convertible Security, the issuance of which resulted in an adjustment to the Exercise Price pursuant to the terms of Section 2(b)(iv), are revised as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such Option or Convertible Security) to provide for either (1) any increase or decrease in the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any such Option or Convertible Security or (2) any increase or decrease in the consideration payable to the Corporation upon such exercise, conversion and/or exchange, then, effective upon such increase or decrease becoming effective, the Exercise Price computed upon the original issue of such Option or Convertible Security (or upon the occurrence of a record date with respect thereto) shall be readjusted to such Conversion Price for such Preferred Stock as would have obtained had such revised terms been in effect upon the original date of issuance of such Option or Convertible Security. Notwithstanding the foregoing, no readjustment pursuant to this Section 2(b)(iii) shall have the effect of increasing the Exercise Price to an amount which exceeds the lower of (i) the Exercise Price in effect immediately prior to the original adjustment made as a result of the issuance of such Option or Convertible Security, or (ii) the Exercise Price that would have resulted from any issuances of Additional Shares of Common Stock (other than deemed issuances of Additional Shares of Common Stock as a result of the issuance of such Option or Convertible Security) between the original adjustment date and such readjustment date.

(C) If the terms of any Option or Convertible Security (excluding Options or Convertible Securities which are themselves Exempted Securities), the issuance of which did not result in an adjustment to the Exercise Price pursuant to the terms of Section 2(b)(iv) (either because the consideration per share (determined pursuant to Section 2(b)(v)) of the Additional Shares of Common Stock subject thereto was equal to or greater than the applicable Conversion Price then in effect, or because such Option or Convertible Security was issued before the Original Issue Date), are revised after the Original Issue Date as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such Option or Convertible Security) to provide for either (1) any increase in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible Security or (2) any decrease in the consideration payable to the Corporation upon such exercise, conversion or exchange, then such Option or Convertible Security, as so amended or adjusted, and the Additional Shares of Common Stock subject thereto determined in the manner provided in Section 2(b)(iii)(A) shall be deemed to have been issued effective upon such increase or decrease becoming effective.

(D) Upon the expiration or termination of any unexercised Option or unconverted or unexchanged Convertible Security (or portion thereof) which resulted (either upon its original issuance or upon a revision of its terms) in an adjustment to the Exercise Price pursuant to the terms of Section 2(b)(iv), the Exercise Price shall be readjusted to such Exercise Price as would have obtained had such Option or Convertible Security (or portion thereof) never been issued.

(E) If the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any Option or Convertible Security, or the consideration payable to the Company upon such exercise, conversion and/or exchange, is calculable at the time such Option or Convertible Security is issued or amended but is potentially subject to adjustment based upon subsequent events, any adjustment to the Exercise Price provided for in this Section 2(b)(iii) shall be effected at the time of such issuance or amendment based on such number of shares or amount of consideration without regard to any provisions for subsequent adjustments (and any subsequent adjustments shall be treated as provided in clauses (B) and (C) of this Section 2(b)(iii)). If the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any Option or Convertible Security, or the consideration payable to the Company upon such exercise, conversion and/or exchange, cannot be calculated at all at the time such Option or Convertible

Security is issued or amended, any adjustment to the Exercise Price that would result under the terms of this Section 2(b)(iii) at the time of such issuance or amendment shall instead be effected at the time such number of shares and/or amount of consideration is first calculable (even if subject to subsequent adjustments), assuming for purposes of calculating such adjustment to the Exercise Price that such issuance or amendment took place at the time such calculation can first be made. In the event an Option or Convertible Security contains alternative exercise terms, such as a cap on the valuation of the Company at which such exercise will be effected, or circumstances where the Option or Convertible Security may be repaid in lieu of conversion, then the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of such Option or Convertible Security shall be deemed not calculable until such time as the applicable exercise terms are determined.

iv. **Adjustment of Exercise Price Upon Issuance of Additional Shares of Common Stock**. In the event the Company shall at any time after the Original Issue Date issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 2(b)(iii)), without consideration or for a consideration per share less than the Exercise Price of the Warrant in effect immediately prior to such issuance or deemed issuance, then the Exercise Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest one-hundredth of a cent) determined in accordance with the following formula:

CP2 = CP1* (A + B) / (A + C).

For purposes of the foregoing formula, the following definitions shall apply:

"CP2" shall mean the Exercise Price in effect immediately after such issuance or deemed issuance of Additional Shares of Common Stock.

"CP1" shall mean the Exercise Price in effect immediately prior to such issuance or deemed issuance of Additional Shares of Common Stock;

"A" shall mean the number of shares of Common Stock outstanding immediately prior to such issuance or deemed issuance of Additional Shares of Common Stock (treating for this purpose as outstanding all shares of Common Stock issuable upon exercise of Options outstanding immediately prior to such issuance or deemed issuance or upon conversion or exchange of Convertible Securities (including Preferred Stock) outstanding (assuming exercise of any outstanding Options therefor) immediately prior to such issue);

"B" shall mean the number of shares of Common Stock that would have been issued if such Additional Shares of Common Stock had been issued or deemed issued at a price per share equal to CP1 (determined by dividing the aggregate consideration received by the Company in respect of such issue by CP1); and

"C" shall mean the number of such Additional Shares of Common Stock issued in such transaction.

v. **Determination of Consideration**. For purposes of this Section 2(b), the consideration received by the Company for the issuance or deemed issuance of any Additional Shares of Common Stock shall be computed as follows:

(A) **Cash and Property**. Such consideration shall:

(1) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Company, excluding amounts paid or payable for accrued interest;

(2) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors; and

(3) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Company for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (i) and (ii) above, as determined in good faith by the Board of Directors.

(B) **Options and Convertible Securities**. The consideration per share received by the Company for Additional Shares of Common Stock deemed to have been issued pursuant to Section 2(b)(iii), relating to Options and Convertible Securities, shall be determined by dividing:

(1) The total amount, if any, received or receivable by the Company as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Company upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by

(2) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities.

vi. **Multiple Closing Dates**. In the event the Company shall issue on more than one date Additional Shares of Common Stock that are a part of one transaction or a series of related transactions and that would result in an adjustment to the Exercise Price of the Warrant pursuant to the terms of Section 2(b)(iv), and such issuance dates occur within a period of no more than 180 days from the first such issuance to the final such issuance, then, upon the final such issuance, the Exercise Price shall be readjusted to give effect to all such issuances as if they occurred on the date of the first such issuance (and without giving effect to any additional adjustments as a result of any such subsequent issuances within such period).

(c) [**Reserved**.]

(d) **[Reserved.]**

(e) **Calculations**. All calculations under this **Section 2** shall be made by rounding to the nearest cent or the nearest $1/100^{th}$ of a share, as applicable. The number of shares of Common Stock outstanding at any given time shall not include shares owned or held by or for the account of the Company, and the disposition of any such shares shall be considered an issuance or sale of shares of Common Stock.

(f) **Voluntary Adjustment by Company**. The Company may at any time during the term of this Warrant, with the prior written consent of the Purchaser, reduce the then current Exercise Price to any amount and for any period of time deemed appropriate by the board of directors of the Company.

3. **Rights Upon Distribution of Assets**. In addition to any adjustments pursuant to **Section 2** above, if the Company shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property, options, evidence of indebtedness or any other assets by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a "**Distribution**"), at any time after the issuance of this Warrant, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations or restrictions on exercise of this Warrant, including without limitation, the Maximum Percentage) immediately before the date on which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution (provided, however, that to the extent that the Holder's right to participate in any such Distribution would result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, then the Holder shall not be entitled to participate in such Distribution to the extent of the Maximum Percentage (and shall not be entitled to beneficial ownership of such shares of Common Stock as a result of such Distribution (and beneficial ownership) to the extent of any such excess) and the portion of such Distribution shall be held in abeyance for the benefit of the Holder until such time or times, if ever, as its right thereto would not result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, at which time or times the Holder shall be granted such Distribution (and any Distributions declared or made on such initial Distribution or on any subsequent Distribution held similarly in abeyance) to the same extent as if there had been no such limitation).

4. **Purchase Rights; Fundamental Transactions**.

(a) **Purchase Rights**. In addition to any adjustments pursuant to **Section 2** above, if at any time while the Warrant is outstanding the Company grants, issues or sells any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of shares of Common Stock (the "**Purchase Rights**"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations or restrictions on exercise of this Warrant, including without limitation, the Maximum Percentage) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issuance or sale of such Purchase Rights (provided, however, that to the extent that the Holder's right to participate in any such Purchase Right would result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, then the Holder shall not be entitled to participate in such Purchase Right to the extent of the Maximum Percentage (and shall not be entitled to beneficial ownership of such shares of Common Stock as a result of such Purchase Right (and beneficial ownership) to the extent of any such excess) and such Purchase Right to such extent shall be held in abeyance for the benefit of the Holder until such time or times, if ever, as its right thereto would not result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, at which time or times the Holder shall be granted such right (and any Purchase Right granted, issued or sold on such initial Purchase Right or on any subsequent Purchase Right held similarly in abeyance) to the same extent as if there had been no such limitation).

(b) **Fundamental Transactions**. The Company shall not enter into or be party to a Fundamental Transaction other than for all cash unless (i) the Successor Entity assumes in writing all of the obligations of the Company under this Warrant and the other Transaction Documents (as defined in the Purchase Agreement) in accordance with the provisions of this **Section 4(b)** pursuant to written agreements in form and substance satisfactory to the Holder and approved by the Holder prior to such Fundamental Transaction, including agreements to deliver to the Holder in exchange for this Warrant a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Warrant, including, without limitation, which is exercisable for a corresponding number of capital stock equivalent to the shares of Common Stock acquirable and receivable upon exercise of this Warrant (without regard to any limitations on the exercise of this Warrant) prior to such Fundamental Transaction, and with an exercise price which applies the Exercise Price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such adjustments to the number of capital stock and such exercise price being for the purpose of protecting the economic value of this Warrant immediately prior to the consummation of such Fundamental Transaction) and (ii) the Successor Entity (including its Parent Entity) is a publicly traded corporation whose common stock is quoted on or listed for trading on a Trading Market. Upon the consummation of a Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of the applicable Fundamental Transaction, the provisions of this Warrant (and if applicable, the other Transaction Documents) referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Warrant and the other Transaction Documents, as applicable, with the same effect as if such Successor Entity had been named as the Company herein. Upon consummation of a Fundamental Transaction, the Successor Entity shall deliver to the Holder confirmation that there shall be issued upon exercise of this Warrant at any time after the consummation of such Fundamental Transaction, in lieu of the shares of Common Stock (or other securities, cash, assets or other property (except such items still issuable under **Sections 3** and **4(a)** above, which shall continue to be receivable thereafter)) issuable upon the exercise of this Warrant prior to such Fundamental Transaction, such shares of publicly traded common stock (or its equivalent) of the Successor Entity (including its Parent Entity) which the Holder would have been entitled to receive upon the happening of such Fundamental Transaction had this Warrant been exercised immediately prior to such Fundamental Transaction (without regard to any limitations on the exercise of this Warrant), as adjusted in accordance with the provisions of this Warrant. Notwithstanding the foregoing, and without limiting **Section 1(g)** hereof, the Holder may elect, at its sole option, by delivery of written notice to the Company to waive this **Section 4(b)** to permit a Fundamental Transaction without the assumption of this Warrant. In addition to and not in substitution for any other rights hereunder, prior to the consummation of a Fundamental Transaction pursuant to which holders of shares of Common Stock are entitled to receive securities or other assets with respect to or in exchange for shares of Common Stock (a "**Corporate Event**"), the Company shall make appropriate provision to insure that the Holder will thereafter have the right to receive upon an exercise of this Warrant at any time after the consummation of a Fundamental Transaction but prior to the Expiration Date, in lieu of the shares of Common Stock (or other securities, cash, assets or other property (except such items still issuable under **Sections 3** and **4(a)** above, which shall continue to be receivable thereafter)) issuable upon the exercise of the Warrant prior to such Fundamental Transaction, such shares of stock, securities, cash, assets or any other property whatsoever (including warrants or other purchase or subscription rights) which the Holder would have been entitled to receive upon the happening of such Fundamental Transaction had this Warrant been exercised immediately prior to such Fundamental Transaction (without regard to any limitations on the exercise of this Warrant). Provision made pursuant to the preceding sentence shall be in a form and substance reasonably satisfactory to the Holder. For the avoidance of doubt, in the event of the occurrence of a Fundamental Transaction, the Successor Entity, in addition to any of its other obligations set for in this **Section 5**, shall agree in writing that the Holder is entitled to the anti-dilution rights set forth in this **Section 5** for the balance of the time periods set forth in this Warrant.

(c) **Application**. The provisions of this **Section 4** shall apply similarly and equally to successive Fundamental Transactions and Corporate Events and shall be applied as if this Warrant (and any such subsequent warrants) were fully exercisable and without regard to any limitations on the exercise of this Warrant (provided that the Holder shall continue to be entitled to the benefit of the Maximum Percentage, applied however with respect to shares of the Company's capital stock registered under the 1934 Act and thereafter receivable upon exercise of this Warrant (or any such other warrant)).

5. **Noncircumvention**. The Company hereby covenants and agrees that the Company will not, by amendment of its articles of incorporation or bylaws, each as amended to date, or through any reorganization, transfer of assets, consolidation, merger, scheme of arrangement, dissolution, issuance or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, and will at all times in good faith carry out all the provisions of this Warrant and take all action as may be required to protect the rights of the Holder. Without limiting the generality of the foregoing, the Company (a) shall not increase the par value of any shares of Common Stock receivable upon the exercise of this Warrant above the Exercise Price then in effect, (b) will not take any action which will cause the exercise price to fall below par value, and (c) shall take all such actions as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and non-assessable shares of Common Stock upon the exercise of this Warrant. Notwithstanding anything herein to the contrary, if after the sixty (60) calendar day anniversary of the Stockholder Approval Date, the Holder is not permitted to exercise this Warrant in full for any reason (other than pursuant to restrictions set forth in **Section 1(g)** hereof), the Company shall use its best efforts to promptly remedy such failure, including, without limitation, obtaining such consents or approvals as necessary to permit such exercise into shares of Common Stock.

6. **Warrant Holder Not Deemed a Stockholder**. Except as otherwise specifically provided herein, the Holder, solely in its capacity as a holder of this Warrant, shall not be entitled to vote or receive dividends or be deemed the holder of share capital of the Company for any purpose, nor shall anything contained in this Warrant be construed to confer upon the Holder, solely in its capacity as the Holder of this Warrant, any of the rights of a stockholder of the Company or any right to vote, give or withhold consent to any corporate action (whether any reorganization, issue of stock, reclassification of stock, consolidation, merger, conveyance or otherwise), receive notice of meetings, receive dividends or subscription rights, or otherwise, prior to the issuance to the Holder of the Warrant Shares which it is then entitled to receive upon the due exercise of this Warrant. In addition, nothing contained in this Warrant shall be construed as imposing any liabilities on the Holder to purchase any securities (upon exercise of this Warrant or otherwise) or as a stockholder of the Company, whether such liabilities are asserted by the Company or by creditors of the Company. Notwithstanding this **Section 6**, the Company shall provide the Holder with copies of the same notices and other information given to the stockholders of the Company generally, contemporaneously with the giving thereof to the stockholders.

7. **Reissuance of Warrants**.

(a) **Transfer of Warrant**. If this Warrant is to be transferred, the Holder shall surrender this Warrant to the Company, whereupon the Company will forthwith issue and deliver upon the order of the Holder a new Warrant (in accordance with **Section 7(d)**), registered as the Holder may request, representing the right to purchase the number of Warrant Shares being transferred by the Holder and, if less than the total number of Warrant Shares then underlying this Warrant is being transferred, a new Warrant (in accordance with **Section 7(d)**) to the Holder representing the right to purchase the number of Warrant Shares not being transferred.

(b) **Lost, Stolen or Mutilated Warrant**. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant (as to which a written certification and the indemnification contemplated below shall suffice as such evidence), and, in the case of loss, theft or destruction, of any indemnification undertaking by the Holder to the Company in customary and reasonable form and, in the case of mutilation, upon surrender and cancellation of this Warrant, the Company shall execute and deliver to the Holder a new Warrant (in accordance with **Section 7(d)**) representing the right to purchase the Warrant Shares then underlying this Warrant.

(c) **Exchangeable for Multiple Warrants**. This Warrant is exchangeable, upon the surrender hereof by the Holder at the principal office of the Company, for a new Warrant or Warrants (in accordance with **Section 7(d)**) representing in the aggregate the right to purchase the number of Warrant Shares then underlying this Warrant, and each such new Warrant will represent the right to purchase such portion of such Warrant Shares as is designated by the Holder at the time of such surrender; provided, however, no warrants for fractional shares of Common Stock shall be given.

(d) **Issuance of New Warrants**. Whenever the Company is required to issue a new Warrant pursuant to the terms of this Warrant, such new Warrant (i) shall be of like tenor with this Warrant, (ii) shall represent, as indicated on the face of such new Warrant, the right to purchase the Warrant Shares then underlying this Warrant (or in the case of a new Warrant being issued pursuant to **Section 7(a)** or **Section 7(c)**, the Warrant Shares designated by the Holder which, when added to the number of shares of Common Stock underlying the other new Warrants issued in connection with such issuance, does not exceed the number of Warrant Shares then underlying this Warrant), (iii) shall have an issuance date, as indicated on the face of such new Warrant which is the same as the Issuance Date, and (iv) shall have the same rights and conditions as this Warrant and (v) such new Warrant shall not be redeemable.

8. **Notices**.

(a) Whenever notice is required to be given under this Warrant, unless otherwise provided herein, such notice shall be in writing and shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via confirmed e-mail prior to 5:30 P.M., New York City time, on a Trading Day, (ii) the next Trading Day after the date of transmission, if such notice or communication is delivered via confirmed e-mail on a day that is not a Trading Day or later than 5:30 P.M., New York City time, on any Trading Day, (iii) the Trading Day following the date of mailing, if sent by nationally recognized overnight courier service specifying next business day delivery, or (iv) upon actual receipt by the Person to whom such notice is required to be given, if by hand delivery. The addresses and e-mail addresses for such communications shall be:

If to the Company:
Fresh Vine Wine, Inc.
P.O. Box 78984
Charlotte, NC 28271
Attention: Michael Pruitt
Email: mp@avenelfinancial.com

If to the Holder, to its address or e-mail address set forth herein or on the books and records of the Company.

Or, in each of the above instances, to such other address or e-mail address as the recipient party has specified by written notice given to each other party at least five (5) days prior to the effectiveness of such change.

(b) The Company shall provide the Holder with prompt written notice of all actions taken pursuant to this Warrant (other than the issuance of shares of Common Stock upon exercise in accordance with the terms hereof), including in reasonable detail a description of such action and the reason therefor. Without limiting the generality of the foregoing, the Company will give written notice to the Holder (i) immediately upon each adjustment of the Exercise Price as provided herein and the number of Warrant Shares, setting forth in reasonable detail, and certifying, the calculation of such adjustment(s), (ii) at least fifteen (15) days prior to the date on which the Company closes its books or takes a record (A) with respect to any dividend or distribution upon the shares of Common

Stock, (B) with respect to any grants, issuances or sales of any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property to holders of shares of Common Stock or (C) for determining rights to vote with respect to any Fundamental Transaction, dissolution or liquidation, provided in each case that such information shall be made known to the public prior to or in conjunction with such notice being provided to the Holder, and (iii) at least fifteen (15) Trading Days prior to the consummation of any Fundamental Transaction. To the extent that any notice provided hereunder constitutes, or contains, material, non-public information regarding the Company or any of its Subsidiaries, the Company, if applicable, shall simultaneously file such notice with the SEC pursuant to a Current Report on Form 8-K or take such other action as reasonably determined by the Holder to disseminate such material, non-public information to the marketplace. If the Company or any of its Subsidiaries provides material non-public information to the Holder that is not simultaneously filed in a Current Report on Form 8-K and the Holder has not agreed to receive such material non-public information, the Company hereby covenants and agrees that the Holder shall not have any duty of confidentiality to the Company, any of its Subsidiaries or any of their respective officers, directors, employees, affiliates or agents with respect to, or a duty to any of the foregoing not to trade on the basis of, such material non-public information. It is expressly understood and agreed that the time of execution specified by the Holder in each Exercise Notice shall be definitive and may not be disputed or challenged by the Company.

9. **Amendment and Waiver**. Except as otherwise provided herein, the provisions of this Warrant may be amended and the Company may take any action herein prohibited or omit to perform any act herein required to be performed by it, only if the Company has obtained the written consent of the Holder. No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party.

10. **Severability**. If any provision of this Warrant is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Warrant so long as this Warrant as so modified continues to express, without material change, the original intentions of the Company and the Holder as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of such parties or the practical realization of the benefits that would otherwise be conferred upon such parties. The Company and the Holder will each endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

11. **Governing Law**. This Warrant shall be governed by and construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Warrant shall be governed by, the internal laws of the State of Nevada, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Nevada or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of Nevada. The Company 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 the Company at the address set forth in the Purchase Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. The Company hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in Clark County, Nevada, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, 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 any 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. 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 the Holder from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to the Holder, to realize on any collateral or any other security for such obligations, or to enforce a judgment or other court ruling in favor of the Holder. **THE COMPANY 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 WARRANT OR ANY TRANSACTION CONTEMPLATED HEREBY.**

12. **Construction; Headings**. This Warrant shall be deemed to be jointly drafted by the Company and the Holder and shall not be construed against any Person as the drafter hereof. The headings of this Warrant are for convenience of reference and shall not form part of, or affect the interpretation of, this Warrant. Terms used in this Warrant but defined in the other Transaction Documents shall have the meanings ascribed to such terms on the Closing Date in such other Transaction Documents unless otherwise consented to in writing by the Holder.

13. **Dispute Resolution**.

(a) **Submission to Dispute Resolution.**

(i) In the case of a dispute relating to the Exercise Price, the Closing Sale Price, or fair market value or the arithmetic calculation of the number of Warrant Shares (as the case may be) (including, without limitation, a dispute relating to the determination of any of the foregoing), the Company or the Holder (as the case may be) shall submit the dispute to the other party via facsimile or electronic mail (A) if by the Company, within two (2) Business Days after the occurrence of the circumstances giving rise to such dispute or (B) if by the Holder, at any time after the Holder learned of the circumstances giving rise to such dispute. If the Holder and the Company are unable to promptly resolve such dispute relating to such Exercise Price, such Closing Sale Price, or such fair market value or such arithmetic calculation of the number of Warrant Shares (as the case may be), at any time after the second (2nd) Business Day following such initial notice by the Company or the Holder (as the case may be) of such dispute to the Company or the Holder (as the case may be), then the Holder may, at its sole option, select an independent, reputable investment bank, reasonably acceptable to the Company, to resolve such dispute.

(ii) The Holder and the Company shall each deliver to such investment bank (A) a copy of the initial dispute submission so delivered in accordance with the first sentence of this **Section 13** and (B) written documentation supporting its position with respect to such dispute, in each case, no later than 5:00 p.m. (New York time) by the fifth (5th) Business Day immediately following the date on which the Holder selected such investment bank (the "**Dispute Submission Deadline**") (the documents referred to in the immediately preceding clauses (A) and (B) are collectively referred to herein as the "**Required Dispute Documentation**") (it being understood and agreed that if either the Holder or the Company fails to so deliver all of the Required Dispute Documentation by the Dispute Submission Deadline, then the party who fails to so submit all of the Required Dispute Documentation shall no longer be entitled to (and hereby waives its right to) deliver or submit any written documentation or other support to such investment bank with respect to such dispute and such investment bank shall resolve such dispute based solely on the Required Dispute Documentation that was delivered to such investment bank prior to the Dispute Submission Deadline). Unless otherwise agreed to in writing by both the Company and the Holder or otherwise requested by such investment bank, neither the Company nor the Holder shall be entitled to deliver or submit any written documentation or other support to such investment bank in connection with such dispute (other than the Required Dispute Documentation).

(iii) The Company and the Holder shall cause such investment bank to determine the resolution of such dispute and notify the Company and the Holder of such resolution no later than ten (10) Business Days immediately following the Dispute Submission Deadline. The fees and expenses of such investment bank shall be borne solely by the Company, and such investment bank's resolution of such dispute shall be final and binding upon all parties absent manifest error.

14. **Remedies, Characterization, Other Obligations, Breaches and Injunctive Relief**. The remedies provided in this Warrant shall be cumulative and in addition to all other remedies available under this Warrant and the other Transaction Documents, at law or in equity (including a decree of specific performance and/or other injunctive relief), and nothing herein shall limit the right of the Holder to pursue actual and consequential damages for any failure by the Company to comply with the terms of this Warrant. The Company covenants to the Holder that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments, exercises and the like (and the computation thereof) shall be the amounts to be received by the Holder and shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof). The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holder and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the holder of this Warrant shall be entitled, in addition to all other available remedies, to specific performance and/or temporary, preliminary and permanent injunctive or other equitable relief from any court of competent jurisdiction in any such case without the necessity of proving actual damages and without posting a bond or other security. The Company shall provide all information and documentation to the Holder that is requested by the Holder to enable the Holder to confirm the Company's compliance with the terms and conditions of this Warrant (including, without limitation, compliance with **Section 2** hereof). The issuance of shares and certificates for shares as contemplated hereby upon the exercise of this Warrant shall be made without charge to the Holder or such shares for any issuance tax or other costs in respect thereof, provided that the Company shall not be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of any certificate in a name other than the Holder or its agent on its behalf.

15. **Payment of Collection, Enforcement and Other Costs**. If (a) this Warrant is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding or the holder otherwise takes action to collect amounts due under this Warrant or to enforce the provisions of this Warrant or (b) there occurs any bankruptcy, reorganization, receivership of the company or other proceedings affecting company creditors' rights and involving a claim under this Warrant, then the Company shall pay the costs incurred by the Holder for such collection, enforcement or action or in connection with such bankruptcy, reorganization, receivership or other proceeding, including, without limitation, attorneys' fees and disbursements.

16. **Transfer**. This Warrant may be offered for sale, sold, transferred or assigned without the consent of the Company subject to compliance with applicable state and federal securities laws.

17. **Registration Rights**. The Holder of this Warrant has certain registration rights set forth in the Merger Agreement to register the resale of the Warrant Shares under the 1933 Act at the time and in the manner specified in the Merger Agreement.

18. **Certain Definitions**. In addition to the terms defined elsewhere in this Warrant or in the Purchase Agreement, for purposes of this Warrant, the following terms shall have the following meanings:

(a) "**1933 Act**" means the Securities Act of 1933, as amended, and the rules and regulations thereunder.

(b) "**1934 Act**" means the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder.

(c) "**Adjustment Right**" means any right granted with respect to any securities issued in connection with, or with respect to, any issuance or sale (or deemed issuance or sale in accordance with Section 2) of shares of Common Stock (other than rights of the type described in Section 3 and 4 hereof) that could result in a decrease in the net consideration received by the Company in connection with, or with respect to, such securities (including, without limitation, any cash settlement rights, cash adjustment or other similar rights).

(d) "**Affiliate**" means, with respect to any Person, any other Person that directly or indirectly controls, is controlled by, or is under common control with, such Person, it being understood for purposes of this definition that "**control**" of a Person means the power directly or indirectly either to vote 10% or more of the stock having ordinary voting power for the election of directors of such Person or direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

(e) "**Approved Stock Plan**" means any employee benefit plan which has been approved by the board of directors of the Company prior to or subsequent to the date hereof pursuant to which shares of Common Stock and standard options to purchase shares of Common Stock may be issued to any employee, officer or director for services provided to the Company in their capacity as such; provided, that such issuance shall not exceed in the aggregate fifteen percent 15% of the outstanding shares of Common Stock without the prior approval of the Holder. Provided, however, once the Company becomes a reporting company under the Exchange Act, any such Stock Plan to be deemed an 'Approved Stock Plan' must be approved by a majority of the disinterested, nonemployee members of the board of directors.

(f) "**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 Issuance 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 together with the Holder or any of the foregoing and (iv) any other Persons whose beneficial ownership of the Company's shares of Common Stock would or could be aggregated with the Holder's and the other Attribution Parties for purposes of Section 13(d) of the 1934 Act. For clarity, the purpose of the foregoing is to subject collectively the Holder and all other Attribution Parties to the Maximum Percentage

(g) "**Bloomberg**" means Bloomberg, L.P.

(h) "**Business Day**" means any day except any Saturday, any Sunday, any day which a federal legal holiday in the United States or any day is on which the Federal Reserve Bank of New York is not open for business.

(i) "**Certificate of Designation**" means the Certificate of Designation of Preferences, Rights and Limitations of Series D Convertible Preferred Stock of the Company.

(j) "**Closing Sale Price**" means, for any security as of any date, the last closing trade price for such security on the Principal Market, as reported by Bloomberg, or, if the Principal Market begins to operate on an extended hours basis and does not designate the closing trade price, then the last trade price of such security prior to 4:00:00 p.m., New York time, as reported by Bloomberg, or, if the Principal Market is not the principal securities exchange that is a Trading Market for such security, the last trade price of such security on the principal securities exchange that is a Trading Market where such security is listed

or traded as reported by Bloomberg, or if the foregoing does not apply, the last trade price of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg, or, if no last trade price is reported for such security by Bloomberg, the average of the ask prices of any market makers for such security as reported in the "**pink sheets**" by OTC Markets Group Inc.. If the Closing Sale Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Closing Sale Price of such security on such date shall be the fair market value as mutually determined by the Company and the Holder. If the Company and the Holder are unable to agree upon the fair market value of such security, then such dispute shall be resolved in accordance with the procedures in Section 13. All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during such period.

(k) "**Common Stock**" means (i) the Company's shares of common stock, $0.001 par value per share, and (ii) any capital stock into which such shares of common stock shall have been changed or any share capital resulting from a reclassification of such shares of common stock.

(l) "**Convertible Securities**" means any stock or other security (other than Options) that is at any time and under any circumstances, directly or indirectly, convertible into, exercisable or exchangeable for, or which otherwise entitles the holder thereof to acquire, any shares of Common Stock.

(m) "**Expiration Date**" means the earlier to occur of (x) the date that is the fifth (5th) anniversary of the Stockholder Approval Date or, if such date falls on a day other than a Trading Day or on which trading does not take place on the Principal Market (a "**Holiday**"), the next date that is not a Holiday or (y) the date fixed for the redemption of the Warrant as provided in Section 1(e) hereunder.

(n) "**Fundamental Transaction**" means the Company, directly or indirectly, in one or more related transactions (i) effects any merger or consolidation of the Company with or into another Person, (ii) effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets, (iii) completes any purchase offer, tender offer or exchange offer (whether by the Company or another Person) pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding Common Stock, (iv) effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property or (v) consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another Person whereby such other Person acquires more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination). Notwithstanding anything to the contrary, the transactions contemplated by the Merger Agreement shall not constitute a Fundamental Transaction.

(o) "**Group**" means a "**group**" as that term is used in Section 13(d) of the 1934 Act and as defined in Rule 13d-5 thereunder.

(p) "**Options**" means any rights, warrants or options to subscribe for or purchase of shares of Common Stock or Convertible Securities.

(q) "**Parent Entity**" of a Person means an entity that, directly or indirectly, controls the applicable Person and whose common stock or equivalent equity security is quoted or listed on a Trading Market, or, if there is more than one such Person or Parent Entity, the Person or Parent Entity with the largest public market capitalization as of the date of consummation of the Fundamental Transaction.

(r) "**Person**" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity or a government or any department or agency thereof.

(s) "**Principal Market**" means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market or the New York Stock Exchange (or any successors to any of the foregoing)..

(t) "**SEC**" means the United States Securities and Exchange Commission or the successor thereto.

(u) "**Series D Preferred Stock**" means the Company's shares of series D Convertible Preferred Stock, $0.001 par value per share.

(v) "**Stockholder Approval Date**" means the date on which the Company's stockholders approve the conversion of the Series D Preferred Stock into shares of Common Stock in accordance with the listing rules of the NYSE American LLC Company Guide.

(w) "**Successor Entity**" means the Person (or, if so elected by the Holder, the Parent Entity) formed by, resulting from or surviving any Fundamental Transaction or the Person (or, if so elected by the Holder, the Parent Entity) with which such Fundamental Transaction shall have been entered into.

(x) "**Trading Day**" means, as applicable, (x) with respect to all price or trading volume determinations relating to the shares of Common Stock, any day on which the shares of Common Stock is traded on the Principal Market, or, if the Principal Market is not the principal Trading Market for the shares of Common Stock, then on the principal securities exchange or securities market that is a Trading Market on which the shares of Common Stock is then traded, provided that "**Trading Day**" shall not include any day on which the shares of Common Stock is scheduled to trade on such exchange or market for less than 4.5 hours or any day that the shares of Common Stock is suspended from trading during the final hour of trading on such exchange or market (or if such exchange or market does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00:00 p.m., New York time) unless such day is otherwise designated as a Trading Day in writing by the Holder or (y) with respect to all determinations other than price or trading volume determinations relating to the shares of Common Stock, any day on which The New York Stock Exchange (or any successor thereto) is open for trading of securities.

(y) "**VWAP**" means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Principal Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Principal Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if the OTC Bulletin Board is not a Principal Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the OTC Bulletin Board, (c) if the Common Stock is not then listed or quoted for trading on the OTC Bulletin Board and if prices for the Common Stock are then reported in the "Pink Sheets" published by Pink OTC Markets, Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Holders of a majority in interest of the Warrants then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

[signature page follows]

IN WITNESS WHEREOF, the Company has caused this Warrant to purchase shares of Common Stock to be duly executed as of the Issuance Date set out above.

FRESH VINE WINE, INC.

By:______________________________
Name: Michael Pruitt
Title: Chief Executive Officer

EXHIBIT A

EXERCISE NOTICE

TO BE EXECUTED BY THE REGISTERED HOLDER TO EXERCISE THIS WARRANT TO PURCHASE SHARES OF COMMON STOCK

FRESH VINE WINE, INC.

The undersigned holder hereby elects to exercise the Warrant to purchase shares of Common Stock (the "**Warrant**") of Fresh Vine Wine, Inc., a company organized under the laws of the State of Nevada (the "**Company**"), as specified below. Capitalized terms used herein and not otherwise defined shall have the respective meanings set forth in the Warrant.

1. **Form of Exercise Price**. The Holder intends that payment of the Aggregate Exercise Price shall be made as:

□a "**Cash Exercise**" with respect to Warrant Shares.

2. **Payment of Exercise Price**. If the Holder has elected a Cash Exercise, the Holder shall pay the Aggregate Exercise Price in the sum of $______________to the Company in accordance with the terms of the Warrant.

3. **Delivery of Warrant Shares**. The Company shall deliver to Holder, or its designee or agent as specified below, shares of Common Stock in accordance with the terms of the Warrant. Delivery shall be made to Holder, or for its benefit, as follows:

□ Check here if requesting delivery as a certificate to the following name and to the following address:

Issue to: ____

____

□ Check here if requesting delivery by Deposit/Withdrawal at Custodian as follows:

DTC Participant: ____

DTC Number:____

Account Number:____

4. **Maximum Percentage Representation**. Notwithstanding anything to the contrary contained herein, this Exercise Notice shall constitute a representation by the Holder of the Warrant submitting this Exercise Notice that after giving effect to the exercise provided for in this Exercise Notice, such Holder (together with its Affiliates) will not have beneficial ownership (together with the beneficial ownership of such Person's Affiliates) of a number of shares of Common Stock which exceeds the Maximum Percentage of the total outstanding shares of Common Stock of the Company as determined pursuant to the provisions of **Section 1(e)(i)** of the Warrant.

Date:_________________

____
Name of Registered Holder

By:___________________________________
Name:

Title:_________________________________

Tax ID:_______________________________

Facsimile:_____________________________

E-mail Address:_________________________

EXHIBIT B

ACKNOWLEDGMENT

The Company (a) hereby acknowledges this Exercise Notice (b) certifies that the above indicated number of shares of Common Stock [are][are not] eligible to be resold by the Holder either (i) pursuant to Rule 144 under the 1933 Act (subject to the Holder's execution and delivery to the Company of a customary Rule 144 representation letter) or (ii) an effective and available registration statement and (c) hereby directs Securities Transfer Corporation to issue the above indicated number of shares of Common Stock in accordance with the Transfer Agent Instructions dated _____________ from the Company and acknowledged and agreed to by Computershare .

Fresh Vine Wine, Inc.

By:_____________________________
Name: Michael Pruitt
Title: Chief Executive Officer

Exhibit 10.3

STOCKHOLDER SUPPORT AGREEMENT

This STOCKHOLDER SUPPORT AGREEMENT (this "***Agreement***") by and among (i) Fresh Vine Wine, Inc., a Nevada corporation ("***Fresh Vine***"); (ii) Amaze Software, Inc., a Delaware corporation (the "***Company***"*)*, and (iii) each stockholder of Fresh Vine listed on the Exhibit A (each, a "***Holder***", and collectively, the "***Holders***"), is dated March 7, 2025 (the "***Effective Date***").

BACKGROUND

A. On or about March 4, 2025, (i) Fresh Vine, (ii) the Company; and (iii) Amaze Holdings Inc., a Delaware corporation and wholly owned subsidiary of Fresh Vine ("Merger Sub"), will enter into that certain Amended and Restated Agreement and Plan of Merger (as amended from time to time, the "***Merger Agreement***"), under which Merger Sub will merge with and into the Company (the "Merger") and the Company will become a wholly owned subsidiary of Fresh Vine in accordance with the Merger Agreement and the DGCL.

B. The Merger Agreement provides that as the consideration to the Company stockholders in connection with the Merger (the "Merger Consideration"), Fresh Vine will issue to the Company stockholders, in a transaction exempt from the registration requirements of the Securities Act in reliance upon Section 4(a)(2) of the Securities Act and/or Rule 506(b) of Regulation D thereunder, [shares of common stock, par value $0.001 per share (the "Common Stock"), of Fresh Vine], shares of Series D Convertible Preferred Stock, par value $0.001 per share ("Series D Preferred Stock"), of Fresh Vine, and warrants to purchase shares of Common Stock of Fresh Vine (the "Warrants").

C. As of Effective Date, each Holder owns of record the number and type of securities set forth opposite such Holder's name on Exhibit A (all such securities and any securities of which ownership of record or the power to vote is acquired by the Holders before the termination of this Agreement are "***Securities***").

D. To induce Fresh Vine and the Company to enter into the Merger Agreement, the Holders are executing and delivering this Agreement to Fresh Vine and the Company.

E. In consideration of the foregoing and of the mutual covenants and agreements contained in this Agreement, the parties agree as follows:

AGREEMENT

1. Definitions. Capitalized terms used but not otherwise defined in this Agreement will have the meaning ascribed to such term in the Merger Agreement.

2. Agreement to Vote. Each Holder, by this Agreement, with respect to its Securities, severally and not jointly, agrees (and agrees to execute such documents or certificates evidencing such agreement as Fresh Vine and/or the Company may reasonably request), during the period from the date hereof through the date on which this Agreement terminates in accordance with Section 5 (the "Voting Period"), to vote, at any meeting of the Holders, and in any action by written consent of the Holders, to the extent that the Securities are entitled to vote thereat, all of such Holder's Securities (a) in favor of the issuance of shares of Fresh Vine Common Stock in excess of the "Exchange Share Cap" and "Individual Holder Share Cap" limitations provided for in the Certificate of Designation of Preferences, Rights and Limitations of the Series D Convertible Preferred Stock upon conversion or exchange of such Series D Convertible Preferred Stock and upon exercise of the Warrants (the "NYSE Compliance Proposal") ; (b) for the election of the Fresh Vine director nominees, including Aaron Day and Pete Deutschman, to the Board of Directors of Fresh Vine to serve until their successors are duly elected or appointed and qualified in accordance with applicable Law; (c) in favor of any proposal to adjourn or postpone such meeting of stockholders of the Fresh Vine to a later date if there are not sufficient votes to approve the NYSE Compliance Proposal; (d) in favor of any other proposals set forth in the Proxy Statement; and (d) against any action, proposal, transaction, or agreement that could reasonably be expected to impede, interfere with, delay, discourage, adversely affect, or inhibit the elimination of the "Exchange Share Cap" and "Individual Holder Share Cap" limitations and/or fulfillment of Fresh Vine's obligations under the Merger Agreement with respect to the issuance of common stock upon conversion of the Series D Preferred Stock and/or exercise of the Warrants. Each Holder understands and acknowledges that Fresh Vine and the Company entered into the Merger Agreement in reliance upon the Holder's execution and delivery of this Agreement. Each Holder acknowledges receipt and review of a copy of the Merger Agreement.

3. Transfer of Securities. Except as may be required by or permitted in the Merger Agreement, each Holder, with respect to its Securities, severally and not jointly, agrees during the Voting Period, that it shall not, directly or indirectly, (a) sell, assign, transfer (including by operation of law), lien, pledge, dispose of or otherwise encumber any of the Securities or otherwise agree to do any of the foregoing (unless the transferee agrees in writing to be bound by this Agreement), (b) deposit any Securities into a voting trust or enter into a voting agreement or arrangement or grant any proxy or power of attorney with respect that is inconsistent with this Agreement, (c) enter into any contract, option or other arrangement or undertaking with respect to the direct or indirect acquisition or sale, assignment, transfer (including by operation of law) or other disposition of any Securities (unless the transferee agrees in writing to be bound by this Agreement), or (d) take any action that would have the effect of preventing or disabling the Holder from performing its obligations; provided that the foregoing shall not prohibit the transfer of the Securities by a Holder to an affiliate of such Holder, but only if such affiliate shall execute this Agreement or a joinder agreeing to become a party to this Agreement. From time to time, at the request of the Fresh Vine, the Holders shall take all such further actions as may be necessary or appropriate to effect the purposes of this Agreement, and execute customary documents incident to the consummation of the Merger.

4. Representations and Warranties. Each Holder, severally and not jointly, represents and warrants for and on behalf of itself to Fresh Vine and Company as follows:

(a) If the Holder is not a natural person, the Holder has all requisite corporate power and authority to (a) execute and deliver this Agreement and the contemplated documents, and (b) consummate the contemplated transactions and perform all obligations to be performed by it. If the Holder is not a natural person, the execution and delivery of this Agreement and the contemplated documents and the consummation of the contemplated transactions have been duly and validly authorized and approved by the board of directors (or an equivalent body) and/or shareholders of the Holder and no other company proceeding on the part of the Holder is necessary to authorize this Agreement and the

contemplated documents. If the Holder is a natural person, the Holder has full legal capacity, right and authority to (a) execute and deliver this Agreement and the contemplated documents, and (b) to consummate the contemplated transactions. This Agreement has been duly and validly executed and delivered by the Holder, and this Agreement constitutes a legal, valid and binding obligation of the Holder, enforceable against the Holder in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar Laws affecting creditors' rights generally and subject, as to enforceability, to general principles of equity. If the Holder is a natural person who is married and resides in a community property jurisdiction, then the Holder's spouse has executed and delivered to the Company and Fresh Vine a spousal consent, in the form attached as Exhibit B, concurrently with the execution and delivery of this Agreement.

(b) The execution, delivery and performance by such Holder of this Agreement and the consummation by such Holder of the transactions contemplated do not and will not (i) conflict with or violate any Law or order applicable to such Holder, (ii) require any consent, approval or authorization of, declaration, filing or registration with, or notice to, any person or entity, (iii) result in the creation of any lien on any Securities (other than pursuant to this Agreement, the Merger Agreement or the Transaction Documents), or (iv) conflict with or result in a breach of or constitute a default under any provision of such Holder's Organizational Documents, as applicable.

(c) Such Holder owns of record and has good, valid and marketable title to the Securities set forth opposite such Holder's name on Exhibit A, free and clear of any Lien (other than pursuant to this Agreement or transfer restrictions under applicable securities Laws or the organizational documents of such Holder, as applicable) and has the sole power (as currently in effect) to vote and the full right, power and authority to sell, transfer and deliver such Securities, and such Holder does not own, directly or indirectly, any other Securities other than as set forth opposite such Holder's name on Exhibit A.

(d) There are no pending legal proceedings against the Holder.

(e) The execution and delivery of this Agreement by the Holder and the other contemplated documents by the Holder and the consummation of the contemplated transactions do not and will not:

(i) violate or conflict with any provision of, or result in the breach of or default under the governing documents of the Holder (if the Holder is not a natural person

(ii) violate or conflict with any provision of, or result in the breach of, or default under, or require any consent, waiver, exemption or approval under, any applicable Law or governmental order applicable to the Holder;

(iii) violate or conflict with any provision of, or result in the breach of, result in the loss of any right or benefit, require any consent, cause acceleration, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, amendment, cancellation or acceleration) under any contract to which the Shareholder is a party or by which the Holder may be bound; or

(iv) result in the creation of any lien upon any of the properties or assets of the Holder.

(f) The Holder is a sophisticated shareholder and has adequate information concerning the business and financial condition of Fresh Vine and the Company to make an informed decision regarding this Agreement and the transactions contemplated by the Merger Agreement and has independently and without reliance upon Fresh Vine or the Company and based on such information as the Holder has deemed appropriate, made its own analysis and decision to enter into this Agreement. The Holder acknowledges that Fresh Vine and the Company have not made and do not make any representation or warranty to the Holder, whether express or implied, of any kind or character except as expressly set forth in this Agreement or the other Transaction Documents.

5. Termination. This Agreement and the obligations of the Holders under this Agreement shall automatically terminate upon the earliest of (a) the date of receipt of the approval by the Fresh Vine stockholders of the NYSE Compliance Proposal; (b) the date of termination of the Merger Agreement in accordance with its terms; or (c) the mutual written agreement of Fresh Vine and the Company. Upon termination or expiration of this Agreement, no party shall have any further obligations or liabilities under this Agreement; provided, however, such termination or expiration shall not relieve any party from liability for any willful breach of this Agreement occurring prior to its termination.

6. Miscellaneous.

(a) Except as otherwise provided in this Agreement or in the Merger Agreement or any Transaction Document, all costs and expenses incurred in connection with this Agreement and the contemplated transactions shall be paid by the party incurring such costs and expenses, whether or not the transactions contemplated are consummated.

(b) All notices, requests, claims, demands and other communications shall be in writing and shall be given (and shall be deemed to have been duly given upon receipt) by delivery in person, by telecopy or e-mail, or by registered or certified mail (postage prepaid, return receipt requested) to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 5(b)):

If to Fresh Vine prior to the Closing Date, to:

Fresh Vine Wine, Inc.
11500 Wayzata Blvd., #1147
Minnetonka, MN 55305
Attn: Michael Pruitt
Email: mp@avenelfinancial.com

with a copy (which will not constitute notice) to:

Maslon LLP
225 South Sixth Street, Suite 2900
Minneapolis, MN 55402
Attn: William M. Mower
Email: bill.mower@maslon.com

If to the Company, or to Fresh Vine after the Closing Date, to:

Amaze Software, Inc.
2901 West Coast Hwy., Ste. 200
Newport Beach, CA 92663
Email: aaron@amaze.co
Attention: Aaron Day

with a copy (which will not constitute notice) to:

Mercer Oak LLC
29 North Ada Street
Chicago, IL 60607
Attn: Thomas J. Dammrich II
E-mail: tj@merceroaklaw.com

If to a Holder, to the address of such Holder set forth on Exhibit A.

(c) If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law, or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the contemplated transactions is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the contemplated transactions be consummated as originally contemplated to the fullest extent possible.

(d) This Agreement, the Merger Agreement and the Transaction Documents constitute the entire agreement among the parties with respect to the subject matter, and supersede all prior agreements and undertakings, both written and oral, among the parties, or any of them, with respect to the subject matter. This Agreement shall not be assigned (whether pursuant to a merger, by operation of law or otherwise) without the prior written consent of the parties, and any attempt to do so without such consent shall be void *ab initio*.

(e) This Agreement shall be binding upon and inure solely to the benefit of each party, and nothing in this Agreement, express or implied, is intended to or shall confer upon any other person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement. No Holder shall be liable for the breach of this Agreement by any other Holder.

(f) This Agreement is intended to create, and creates a contractual relationship and is not intended to create, and does not create, any agency, partnership, joint venture or any like relationship between the parties.

(g) The parties agree that irreparable damage may occur in the event any provision of this Agreement is not performed in accordance with the terms and that the parties shall be entitled to seek specific performance of the terms, in addition to any other remedy at law or in equity. Each of the parties agrees that it shall not oppose the granting of an injunction, specific performance or other equitable relief when expressly available pursuant to the terms of this Agreement on the basis that the other parties have an adequate remedy at law or that an award of specific performance is not an appropriate remedy for any reason at law or equity. Any party seeking an injunction or injunctions to prevent breaches or threatened breaches of, or to enforce compliance with, this Agreement, when expressly available pursuant to the terms of this Agreement, shall not be required to provide any bond or other security in connection with any such Order.

(h) This Agreement shall be governed by, construed and enforced in accordance with the Laws of the State of Nevada, without regard to its conflict of laws principles. All actions, suits or proceedings (each an "***Action***", and, collectively, "***Actions***"), arising out of or relating to this Agreement shall be heard and determined exclusively in any state or federal court located in Clark County, Nevada (the "***Specified Courts***"). Each party (a) submits to the exclusive jurisdiction of any Specified Court for the purpose of any Action arising out of or relating to this Agreement brought by any party and (b) irrevocably waives, and agrees not to assert by way of motion, defense or otherwise, in any such Action, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the Action is brought in an inconvenient forum, that the venue of the Action is improper, or that this Agreement or the transactions contemplated hereby may not be enforced in or by any Specified Court. Each party agrees that a final judgment in any Action shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law. Each party irrevocably consents to the service of the summons and complaint and any other process in any other Action relating to the transactions contemplated by this Agreement, on behalf of itself, or its property, by personal delivery of copies of such process to such party at the applicable address set forth in Section 6(b). Nothing in this Section 6(h) shall affect the right of any party to serve legal process in any other manner permitted by Law.

(i) EACH OF THE PARTIES WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY ACTION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR THE CONTEMPLATED TRANSACTIONS. EACH PARTY (A) CERTIFIES THAT NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF ANY ACTION, SEEK TO ENFORCE THAT FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 6(i).

(j) This Agreement may be executed and delivered (including by facsimile or portable document format (pdf) transmission) in one or more counterparts, and by the different parties in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

(k) Without further consideration, each party shall use commercially reasonable efforts to execute and deliver or cause to be executed and delivered such additional documents and instruments and take all such further action as may be reasonably necessary or desirable to consummate the transactions contemplated by this Agreement.

(l) This Agreement shall not be effective or binding upon any Holder until such time as the Merger Agreement is executed by each of the parties.

(m) If, and as often as, there are any changes in the Company or the Company securities by way of equity split, dividend, combination or reclassification, or through merger, consolidation, reorganization, recapitalization or business combination, or by any other means, equitable adjustment shall be made to the provisions of this Agreement as may be required so that the rights, privileges, duties and obligations shall continue with respect to the Holder and its Securities as so changed.

(n) Each Holder signs this Agreement solely in such Holder's capacity as a holder of securities of Fresh Vine, and not in any other capacity, and if applicable, this Agreement shall not limit or otherwise affect the actions of any affiliate, employee or designee of such Holder or any of its affiliates in his or her capacity as an officer or director of the Fresh Vine.

{Remainder of Page Intentionally Left Blank; Signature Pages Follow}

The parties have executed this Agreement as of the Effective Date.

FRESH VINE:

FRESH VINE WINE, INC.

By:________________________
Name: Michael Pruitt
Title: Chief Executive Officer

COMPANY:

AMAZE SOFTWARE, INC.

By: ________________________
Name: Aaron Day
Title: Chief Executive Officer

The parties have executed this Agreement as of the Effective Date.

HOLDER:

By: ____

[NAME]

Exhibit 10.4

LOCK-UP AGREEMENT

THIS LOCK-UP AGREEMENT (this "***Agreement***") by and among (i) Fresh Vine Wine, Inc., a Nevada corporation ("***Fresh Vine***"); (ii) Amaze Software, Inc., a Delaware corporation (the "***Company***") and (iii) the undersigned party listed on the signature page (the "***Holder***"), is dated March 7, 2025. Any capitalized term used but not defined in this Agreement will have the meaning ascribed to such term in the Merger Agreement.

BACKGROUND

A. On or about March 7, 2025, (i) Fresh Vine, (ii) the Company; and (iii) Amaze Holdings, Inc., a Delaware corporation, intend to enter into that certain Amended and Restated Agreement and Plan of Merger (as amended from time to time, the "***Merger Agreement***"), under which, among other things, the Company will become a wholly owned subsidiary of Fresh Vine in accordance with the Merger Agreement and the DGCL.

B. Holder is as of immediately before the Closing a stockholder of Fresh Vine.

C. Pursuant to and as an inducement to enter into the Merger Agreement, the parties desire to enter into this Agreement, under which the shares of Common Stock, par value $0.001 per share of Fresh Vine (the "***Fresh Vine Common Stock***") owned by Holder as of the date hereof, including all Fresh Vine securities convertible into or exchangeable for Fresh Vine Common stock, (all such securities, together with any securities paid as dividends or distributions with respect to such securities or into which such securities are exchanged or converted, the "***Restricted Securities***") shall become subject to limitations on disposition as set forth in this Agreement.

D. In consideration of the foregoing and of the mutual covenants and agreements contained in this Agreement, the parties agree as follows:

AGREEMENT

1. <u>Lock-Up Provisions</u>.

(a) Holder agrees not to, during the period (the "***Lock-Up Period***") commencing from the Closing and ending on the earlier of (x) the six (6) month anniversary of the Closing, and (y) the first date after the Closing on which the last sale price of Fresh Vine Common Stock on the principal securities exchange or securities market on which such security is then traded equals or exceeds $2.00 per share (as adjusted for share splits, share capitalizations, share consolidations, rights issuances, subdivisions, reorganizations, recapitalizations and the like) for any twenty (20) trading days within any thirty (30) trading day period commencing at least one hundred fifty (150) days after the Closing; (i) lend, offer, assign, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any Restricted Securities, (ii) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Restricted Securities, or (iii) publicly announce the intention to do any of the foregoing, whether any such transaction described in clauses (i), (ii) or (iii) above is to be settled by delivery of Restricted Securities or other securities, in cash or otherwise (any of the foregoing described in clauses (i), (ii) or (iii), a "***Prohibited Transfer***"). The foregoing sentence shall not apply to the transfer of any or all of the Restricted Securities owned by Holder (I) by gift, will or intestate succession upon the death of Holder, (II) to any Permitted Transferee (as defined below), (III) under a court order or settlement agreement related to the distribution of assets in connection with the dissolution of marriage or civil union or under a domestic relations order, (IV) to Fresh Vine in accordance with the requirements of the Merger Agreement, or (V) required by virtue of the laws of Nevada; provided, however, that in the of cases of clauses (I), (II) or (III) it shall be a condition to such transfer that the transferee executes and delivers to Fresh Vine an agreement stating that the transferee is receiving and holding the Restricted Securities subject to the provisions of this Agreement applicable to Holder, and there shall be no further transfer of such Restricted Securities except in accordance with this Agreement. As used in this Agreement, the term "***Permitted Transferee***" shall mean: (A) the members of Holder's immediate family (for purposes of this Agreement, "immediate family" shall mean with respect to any natural person, any of the following: such person's spouse, the siblings of such person and his or her spouse, and the direct descendants and ascendants (including adopted and step children and parents) of such person and his or her spouses and siblings), (B) any trust or charitable organization for the direct or indirect benefit of Holder or the immediate family of Holder, (C) if Holder is a trust, the trustor or beneficiary of such trust or to the estate of a beneficiary of such trust, (D) if Holder is an entity, as a distribution to limited partners, shareholders, members of, or owners of similar equity interests in Holder. Holder further agrees to execute such agreements as may be reasonably requested by Fresh Vine that are consistent with the foregoing.

(b) If any Prohibited Transfer is made or attempted contrary to the provisions of this Agreement, such purported Prohibited Transfer shall be null and void *ab initio*, and Fresh Vine shall refuse to recognize any such purported transferee of the Restricted Securities as one of its equity holders for any purpose. In order to enforce this <u>Section 1</u>, Fresh Vine may impose stop-transfer instructions with respect to the Restricted Securities of Holder (and Permitted Transferees and assigns) until the end of the Lock-Up Period.

(c) During the Lock-Up Period, each certificate or book entry evidencing any Restricted Securities shall be stamped or otherwise imprinted with a legend in substantially the following form, in addition to any other applicable legends:

> "THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS ON TRANSFER SET FORTH IN A LOCK-UP AGREEMENT, DATED AS OF MARCH ___, 2025, BY AND AMONG THE ISSUER OF SUCH SECURITIES (THE "ISSUER"), AND THE ISSUER'S SECURITY HOLDER. A COPY OF SUCH LOCK-UP AGREEMENT WILL BE FURNISHED WITHOUT CHARGE BY THE ISSUER TO THE HOLDER UPON WRITTEN REQUEST."

(d) For the avoidance of any doubt, Holder shall retain all of its rights as a shareholder of Fresh Vine with respect to the Restricted Securities during the Lock-Up Period, including the right to vote any Restricted Securities, but subject to the obligations under the Merger Agreement.

2. Miscellaneous.

(a) Effective Date. This Agreement shall be binding upon Holder upon Holder's execution and delivery of this Agreement.

(b) Binding Effect; Assignment. This Agreement shall be binding upon and inure to the benefit of the parties and their respective permitted successors and assigns. This Agreement and all obligations of Holder are personal to Holder and may not be transferred or delegated by Holder at any time. Fresh Vine may freely assign any or all of its rights under this Agreement, in whole or in part, to any successor entity (whether by merger, consolidation, equity sale, asset sale or otherwise) without obtaining the consent or approval of Holder.

(c) Third Parties. Nothing contained in this Agreement or in any instrument or document executed by any party in connection with the contemplated transactions shall create any rights in, or be deemed to have been executed for the benefit of, any person or entity that is not a party or a successor or permitted assign of such a party.

(d) Notice. If to Fresh Vine, to:

Fresh Vine Wine, Inc.
11500 Wayzata Blvd., #1147
Minnetonka, MN 55305
Attn: Michael Pruitt
Email: mp@avenelfinancial.com

with a copy (which will not constitute notice) to:

Maslon LLP
225 South Sixth Street, Suite 2900
Minneapolis, MN 55402
Attn: William M. Mower
Email: bill.mower@maslon.com

If to the Company, to:

Amaze Software, Inc.
2901 West Coast Hwy., Ste. 200
Newport Beach, CA 92663
Email: aaron@amaze.co
Attention: Aaron Day

with a copy (which will not constitute notice) to:

Mercer Oak LLC
29 North Ada Street
Chicago, IL 60607
Attn: Thomas J. Dammrich II
E-mail: tj@merceroaklaw.com

If to a Holder, to the address of such Holder set forth on their signature page.

(e) Governing Law; Jurisdiction. This Agreement shall be governed by, construed and enforced in accordance with the Laws of the State of Delaware, without regard to its conflict of laws principles. All actions, suits or proceedings (each an "***Action***", and, collectively, "***Actions***"), arising out of or relating to this Agreement shall be heard and determined exclusively in any state or federal court located in New Castle County, Delaware (the "***Specified Courts***"). Each party (a) submits to the exclusive jurisdiction of any Specified Court for the purpose of any Action arising out of or relating to this Agreement brought by any party and (b) irrevocably waives, and agrees not to assert by way of motion, defense or otherwise, in any such Action, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the Action is brought in an inconvenient forum, that the venue of the Action is improper, or that this Agreement or the contemplated transactions may not be enforced in or by any Specified Court. Each party agrees that a final judgment in any Action shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law. Each party irrevocably consents to the service of the summons and complaint and any other process in any other Action relating to the transactions contemplated by this Agreement, on behalf of itself, or its property, by personal delivery of copies of such process to such party at the applicable address set forth in Section 2(d). Nothing in this Section 2(e) shall affect the right of any party to serve legal process in any other manner permitted by Law.

(f) WAIVER OF JURY TRIAL. EACH OF THE PARTIES WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY ACTION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR THE CONTEMPLATED TRANSACTIONS. EACH PARTY (A) CERTIFIES THAT NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF ANY ACTION, SEEK TO ENFORCE THAT FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 2(f).

(g) Interpretation. The titles and subtitles used in this Agreement are for convenience only and are not to be considered in construing or interpreting this Agreement. In this Agreement, unless the context otherwise requires: (i) any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa; (ii) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding or succeeding such term and shall be deemed in each case to be followed by the words "without limitation"; and (iii) the term "or" means "and/or". The parties have participated jointly in the negotiation and drafting of this Agreement. Consequently, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

(i) Amendments and Waivers. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance, and either retroactively or prospectively) only with the written consent of Fresh Vine, the Company, and Holder. No failure or delay by a party in exercising any right shall operate as a waiver. No waivers of or exceptions to any term, condition, or provision of this Agreement, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such term, condition, or provision.

(j) Severability. In case any provision in this Agreement shall be held invalid, illegal or unenforceable in a jurisdiction, such provision shall be modified or deleted, as to the jurisdiction involved, only to the extent necessary to render the same valid, legal and enforceable, and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired nor shall the validity, legality or enforceability of such provision be affected in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties will substitute for any invalid, illegal or unenforceable provision a suitable and equitable provision that carries out, so far as may be valid, legal and enforceable, the intent and purpose of such invalid, illegal, or unenforceable provision.

(k) Specific Performance. Holder acknowledges that its obligations under this Agreement are unique, recognizes and affirms that in the event of a breach of this Agreement by Holder, money damages will be inadequate and Fresh Vine will have no adequate remedy at law, and agrees that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed by Holder in accordance with their specific terms or were otherwise breached. Accordingly, Fresh Vine shall be entitled to an injunction or restraining order to prevent breaches of this Agreement by Holder and to enforce specifically the terms and provisions, without the requirement to post any bond or other security or to prove that money damages would be inadequate, this being in addition to any other right or remedy to which such party may be entitled under this Agreement, at law or in equity.

(l) Entire Agreement. This Agreement, the Merger Agreement, and the Transaction Documents constitute the entire agreement among the parties with respect to the subject matter, and supersede all prior agreements and undertakings, both written and oral, among the parties, or any of them, with respect to the subject matter. This Agreement shall not be assigned (whether under a merger, by operation of law or otherwise) without the prior written consent of the parties, and any attempt to do so without such consent shall be void *ab initio*.

(m) Further Assurances. From time to time, at another party's request and without further consideration (but at the requesting party's reasonable cost and expense), each party shall execute and deliver such additional documents and take all such further action as may be reasonably necessary to consummate the transactions contemplated by this Agreement.

(n) Counterparts. This Agreement may also be executed and delivered by email in portable document format in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

{Remainder of Page Intentionally Left Blank; Signature Pages Follow}

The parties have executed this Agreement as of the date first written above.

Fresh Vine:

FRESH VINE WINE, INC.

By:________________________
Name: Michael Pruitt
Title: Chief Executive Officer

COMPANY:

AMAZE SOFTWARE, INC.

By: ________________________
Name: Aaron Day
Title: Chief Executive Officer

{Additional Signature on the Following Page}

In addition to the signatures set forth above or in counterpart documents, the party or parties below have executed this Lock-Up Agreement as of the date first written above.

Holder:

____
[NAME]

Address for Notice in accordance with Section 2(d)

TERMINATION AGREEMENT

THIS TERMINATION AGREEMENT (this "**Agreement**"), dated as of March 7, 2025, is made and entered into by and between **FRESH VINE WINE, INC**., a Nevada corporation ("**Fresh Vine**") and **ADIFEX HOLDINGS LLC**, a Delaware limited liability company (the "**Company**"). Capitalized terms not otherwise defined in this Agreement shall have the meanings ascribed to them in the Business Combination Agreement (as defined below).

RECITALS

WHEREAS, that certain Business Combination Agreement (the "**Business Combination Agreement**"), was made and entered into as of November 3, 2024, by and among Fresh Vine; (i) Amaze Holdings Inc., a Delaware corporation and wholly owned subsidiary of Fresh Vine ("**Pubco**"); (ii) VINE Merger Sub Inc., a Delaware corporation and wholly subsidiary of Pubco ("**VINE Merger Sub**"); (iii) Adifex Merger Sub LLC, a Delaware limited liability company and wholly owned subsidiary of Pubco ("**Adifex Merger Sub**"), and the Company; and

WHEREAS, Section 10.1(a) of the Business Combination Agreement provides that the Business Combination Agreement may be terminated prior to the Purchase Merger Effective Time by mutual written consent of Fresh Vine and the Company

WHEREAS, Fresh Vine and the Company desire to terminate the Business Combination Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Section 1. Business Combination Agreement and Related Matters.

(a) **Termination**. Fresh Vine and the Company mutually agree that the Business Combination Agreement is hereby terminated, effective immediately upon the execution of this Agreement by each of the parties hereto.

(b) **Survival of Certain Provisions**. Notwithstanding Section 1(a), Section 1 (Definitions and Interpretative Provisions), Section 6.12 (Public Announcements) and Section 11 (Miscellaneous Provisions) of the Business Combination Agreement shall survive the termination of the Business Combination Agreement.

(c) Mutual Releases.

i. To the fullest extent permitted by applicable law, Fresh Vine, on behalf of itself, its subsidiaries and affiliates and their respective future, present and former directors, officers, shareholders, partners, members, employees, agents, attorneys, successors and assigns (collectively, the "**Fresh Vine Releasing Parties**"), hereby unequivocally, knowingly, voluntarily, unconditionally and irrevocably waives, fully and finally releases, remises, exculpates, acquits and forever discharges the Company, the Company's, subsidiaries and affiliates and their respective future, present and former directors, officers, shareholders, partners, members, employees, agents, attorneys, successors and assigns (collectively, the "**Company Released Parties**") from any and all actions, causes of action, suits, debts, accounts, bonds, bills, covenants, contracts, controversies, obligations, claims, counterclaims, setoffs, debts, demands, damages, costs, expenses, compensation and liabilities of every kind and any nature whatsoever, in each case whether absolute or contingent, liquidated or unliquidated, known or unknown, and whether arising at law or in equity, which such Fresh Vine Releasing Party had, has, or may have based upon, arising from, in connection with or relating to the Business Combination Agreement, any agreement or instrument delivered in connection therewith or the transactions contemplated thereby; provided, however, that the foregoing shall not limit the rights and obligations of the parties hereto (i) under this Agreement, or (ii) under the Business Combination Agreement which survive the termination thereof as provided in Section 1(b) of this Agreement. Each Fresh Vine Releasing Party shall refrain from, directly or indirectly, asserting any claim or demand or commencing, instituting, maintaining, facilitating, aiding or causing to be commenced, instituted or maintained, any legal or arbitral proceeding of any kind against any Company Released Party based upon any matter released under this Section 1(c)(i).

ii. To the fullest extent permitted by applicable law, the Company, on behalf of itself, its subsidiaries and affiliates and their respective future, present and former directors, officers, shareholders, partners, members, employees, agents, attorneys, successors and assigns (collectively, the "**Company Releasing Parties**"), hereby unequivocally, knowingly, voluntarily, unconditionally and irrevocably waives, fully and finally releases, remises, exculpates, acquits and forever discharges Fresh Vine, each of Fresh Vine's subsidiaries and affiliates and their respective future, present and former directors, officers, shareholders, partners, members, employees, agents, attorneys, successors and assigns (collectively, the "**Fresh Vine Released Parties**") from any and all actions, causes of action, suits, debts, accounts, bonds, bills, covenants, contracts, controversies, obligations, claims, counterclaims, setoffs, debts, demands, damages, costs, expenses, compensation and liabilities of every kind and any nature whatsoever, in each case whether absolute or contingent, liquidated or unliquidated, known or unknown, and whether arising at law or in equity, which such Company Releasing Party had, has, or may have based upon, arising from, in connection with or relating to the Business Combination Agreement, any agreement or instrument delivered in connection therewith or the transactions contemplated thereby; provided, however, that the foregoing shall not limit the rights and obligations of the parties hereto (i) under this Agreement, or (ii) under the Business Combination Agreement which survive the termination thereof as provided in Section 1(b) of this Agreement. Each Company Releasing Party shall refrain from, directly or indirectly, asserting any claim or demand or commencing, instituting, maintaining, facilitating, aiding or causing to be commenced, instituted or maintained, any legal or arbitral proceeding of any kind against any Fresh Vine Released Party based upon any matter released under this Section 1(c)(ii).

Section 2. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

Section 3. Entire Agreement; Third Party Beneficiaries. This Agreement constitutes the entire agreement and supersede all prior agreements and understandings, both written and oral, among or between any of the parties hereto with respect to the subject matter hereof and thereof. Other than Section 1(c)(i) and Section 1(c)(ii) of this Agreement, which are intended to benefit, and be enforceable by, the Fresh Vine Released Parties and the Company Released Parties, respectively, this Agreement is not intended to confer upon any person or entity not a party hereto (and their successors and assigns permitted by Section 2) any rights or remedies hereunder.

Section 4. Applicable Law; Jurisdiction. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws. In any action or proceeding between any of the parties arising out of or relating to this Agreement or any of the Contemplated Transactions, each of the parties: (a) irrevocably and unconditionally consents and submits to the exclusive jurisdiction and venue of the Court of Chancery of the State of Delaware or, to the extent such court does not have subject matter jurisdiction, the Superior Court of the State of Delaware or the United States District Court for the District of Delaware; (b) agrees that all claims in respect of such action or proceeding shall be heard and determined exclusively in accordance with clause (a) of this Section; (c) waives any objection to laying venue in any such action or proceeding in such courts; (d) waives any objection that such courts are an inconvenient forum or do not have jurisdiction over any Party, (e) agrees that service of process upon such Party in any such action or proceeding shall be effective if notice is given in accordance with Section 6 of this Agreement; and (f) irrevocably and unconditionally waives the right to trial by jury.

Section 5. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. The exchange of a fully executed Agreement (in counterparts or otherwise) by all parties by facsimile or electronic transmission in .PDF format shall be sufficient to bind the parties to the terms and conditions of this Agreement

Section 6. Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly delivered and received hereunder (a) one (1) Business Day after being sent for next Business Day delivery, fees prepaid, via a reputable international overnight courier service, (b) upon delivery in the case of delivery by hand or (c) on the date delivered in the place of delivery if sent by email or facsimile (with a written or electronic confirmation of delivery) prior to 6:00 p.m. (Delaware time), otherwise on the next succeeding Business Day, in each case to the intended recipient as set forth below (or to such other address, facsimile number or email address as such party shall have specified in a written notice to the other parties):

if to Fresh Vine: Fresh Vine Wine, Inc.
11500 Wayzata Blvd., #1147
Minnetonka, MN 55305
Attn: Michael Pruitt
Email: mp@avenelfinancial.com

with a copy to (which shall not constitute notice):

Maslon LLP
225 South Sixth Street, Suite 2900
Minneapolis, MN 55402
Attn: William M. Mower
Email: bill.mower@maslon.com

if to the Company: Adifex Holdings LLC
900 Foulk Road, Suite 201
Wilmington, DE 19803
Email: roman@rokon.at
Attention: Roman Scharf

with a copy to (which shall not constitute notice):

Nelson Mullins Riley & Scarborough LLP
101 Constitution Ave, NW, Suite 900
Washington, DC 20001
Attn: Andy Tucker
E-mail: andy.tucker@nelsonmullins.com

Section 7. Amendments and Waivers. This Agreement may not be modified or amended except by an instrument or instruments in writing signed by the party against whom enforcement of any such modification or amendment is sought. No failure on the part of any Party to exercise any power, right, privilege or remedy under this Agreement, and no delay on the part of any Party in exercising any power, right, privilege or remedy under this Agreement, shall operate as a waiver of such power, right, privilege or remedy; and no single or partial exercise of any such power, right, privilege or remedy shall preclude any other or further exercise thereof or of any other power, right, privilege or remedy. Any provision hereof may be waived by the waiving Party solely on such Party's own behalf, without the consent of any other Party. No Party shall be deemed to have waived any claim arising out of this Agreement, or any power, right, privilege or remedy under this Agreement, unless the waiver of such claim, power, right, privilege or remedy is expressly set forth in a written instrument duly executed and delivered on behalf of such Party and any such waiver shall not be applicable or have any effect except in the specific instance in which it is given.

Section 8. Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions of this Agreement or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If a final judgment of a court of competent jurisdiction declares that any term or provision of this Agreement is invalid or unenforceable, the Parties agree that the court making such determination shall have the power to limit such term or provision, to delete specific words or phrases or to replace such term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be valid and enforceable as so modified. In the event such court does not exercise the power granted to it in the prior sentence, the Parties agree to replace such invalid or unenforceable term or provision with a valid and enforceable term or provision that will achieve, to the extent possible, the economic, business and other purposes of such invalid or unenforceable term or provision.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed as of the date first above written.

FRESH VINE WINE, INC.

By: /s/ Michael Pruitt____________________
Michael Pruitt
Its: Chief Executive Officer

ADIFEX HOLDINGS LLC

By: /s/ Lawrence Fish___________________
Printed Name: _______________________
Its: Authorized Signatory________________

FOR IMMEDIATE RELEASE

Fresh Vine Wine, Inc. (NYSE: VINE) Completes the Acquisition of Amaze Software, Inc., Combined Companies Set to Transform the Creator Economy

Charlotte, NC and Newport Beach, CA — March 10, 2025 — Fresh Vine Wine, Inc. (NYSE American: VINE) today announced the completion of the acquisition of Amaze Software, Inc., This transaction marks a pivotal moment for Vine and Amaze and the creator economy at large, introducing diverse product offerings and innovative, creator-driven brand engagement opportunities.

Amaze Software, Inc., which operates Amaze Studio, Spring by Amaze, and Teespring Marketplace, along with a robust managed services division, brings together a suite of innovative commerce solutions supporting over 14 million creators, entrepreneurs, and businesses of all sizes. Known for its significant presence across social media platforms like YouTube, TikTok, Twitch, and Discord, and its recently announced integration with Adobe Express, Amaze empowers creators to "sell anything, anywhere," while providing seamless integrations into global supply chains with localized support across North America, Europe, Australia, and India.

This strategic acquisition combines the e-commerce technology of Amaze Software with Fresh Vine Wine's premium consumer brand to pioneer a new category in creator-driven commerce.

This collaboration enables influencers, entrepreneurs, and brands to launch their own exclusive wine labels, deepening their engagement with fans and opening new, sustainable revenue streams. Creators will now have access to a vastly expanded product catalog—including apparel, accessories, digital content, and, for the first time, premium wine and spirits—offering unique avenues for brand-building and revenue generation.

"We've seen firsthand how powerful the connection is between creators and their audiences," said Michael Pruitt, CEO of Fresh Vine Wine. "This transaction provides creators with the infrastructure to transform their communities into sustainable businesses."

"The Creator Economy and Social Commerce are going through rapid change and the disruption to traditional commerce is changing the dynamics of how people sell. With Amaze now situated as the dominant distribution platform for creators and brands, it will open the door to many other technology and product companies to take advantage of our distribution and reach." Said Aaron Day, CEO of Amaze.

"The creators and entrepreneurs within the creator economy are demanding more from their partners. They want to build sustainable businesses with and for their communities. This transaction empowers their businesses to thrive," said Ezra Rosensaft, CFO of Amaze Software Inc.

The transaction involved a $75 million equity exchange, reflecting the combined value and growth potential of the two companies. With this structure, shareholders gain exposure to one of the fastest-growing sectors in digital commerce, positioning Amaze as a market leader in the creator economy.

"We believe this transaction unlocks massive value for our shareholders and is an investment in the future of digital entrepreneurship. We expect to see significant long-term growth," Rosensaft added.

"We're just getting started," said Amaze CEO, Aaron Day. "Creators today are the entrepreneurs of tomorrow. At Amaze, we're fully committed to the democratization of commerce. Every day, thousands of people sign up to build their brands and monetize their communities through our platform. By combining with Fresh Vine Wine, we're offering creators a unique opportunity to expand their revenue streams, turning their dreams of sustainable revenue and brand ownership into reality. This is the beginning of a new chapter for creator-led commerce."

For more information, visit https://ir.freshvinewine.com/info/ and www.amaze.co.

For press inquiries, please contact investorrelations@freshvinewine.com and investor.relations@amaze.co

Cautionary Note Regarding Forward-Looking Statements

This release contains forward-looking statements within the meaning of the federal securities laws. Such statements relate to future plans, developments, performance or financial condition. These forward-looking statements are not historical facts, but rather are based on current plans, expectations, and estimates of management of Fresh Vine and Amaze. Forward-looking statements include, but are not limited to, statements regarding our or our management team's expectations, hopes, beliefs, intentions or strategies regarding the future of the combined companies and the expected benefits of the acquisition. In addition, any statements that refer to projections, forecasts or other characterizations of future events or circumstances, including any underlying assumptions, are forward-looking statements. In some cases, you can identify forward-looking statements by the following words: "anticipate," "believe," "continue," "could," "estimate," "expect," "intend," "may," "ongoing," "plan," "potential," "predict," "project," "should," or the negative of these terms or other similar expressions, but the absence of these words does not mean that a statement is not forward-looking.

Forward-looking statements are subject to a number of risks and uncertainties (some of which are beyond our control) that may cause actual results or performance to be materially different from those expressed or implied by such forward-looking statements. The following factors, among others, could cause actual results and the timing of events to differ materially from the anticipated results or other expectations expressed in the forward-looking statements: (i) the potential effect of the announcement of the acquisition on Amaze's or Fresh Vine's business relationships, performance and business generally, including potential difficulties in employee retention; (ii) the outcome of any legal proceedings related to the merger agreement or the acquisition (iii) the risk that Fresh Vine will be unable to maintain the listing of Fresh Vine's securities on NYSE American; (iv) the risk that the price of Fresh Vine's securities may be volatile due to a variety of factors, including changes in the competitive industries in which Fresh Vine or Amaze operates, variations in performance across competitors, changes in laws and regulations affecting Fresh Vine's or Amaze's business and changes in the capital structure; (v) the risk that the anticipated benefits of the acquisition or other commercial opportunities may otherwise not be fully realized or may take longer to realize than expected; (vi) the impact of changes in applicable law, rules, regulations, regulatory guidance, or social conditions in the countries in which customers and suppliers operate; (vii) the risk that integration of Amaze and Vine post-closing may not occur as anticipated or the combined company may not be able to achieve the growth prospects and synergies expected from the transaction, as well as the risk of potential delays, challenges and expenses associated with integrating the combined company's existing businesses; (viii) the risk that Fresh Vine and/or Amaze may not achieve or sustain profitability; (ix) the risk that Fresh Vine and/or Amaze will need to raise additional capital to execute its business plan, which may not be available on acceptable

terms or at all; and (x) the risk that Fresh Vine and/or Amaze experiences difficulties in managing its growth and expanding operations. Additional factors that may affect the future results of Fresh Vine are set forth in its filings with the United States Securities and Exchange Commission (the "SEC"), which are available on the SEC's website at www.sec.gov. The risks and uncertainties described above and in the SEC filings noted above are not exclusive and further information concerning Fresh Vine and its business, including factors that potentially could materially affect its business, financial conditions or operating results, may emerge from time to time. Readers are urged to consider these factors carefully in evaluating these forward-looking statements, and not to place undue reliance on any forward-looking statements. Readers should also carefully review the risk factors described in other documents that Fresh Vine files from time to time with the SEC. The forward-looking statements in this release speak only as of the date of this release. Except as required by law, Fresh Vine assumes no obligation to update or revise these forward-looking statements for any reason, even if new information becomes available in the future.

Exhibit 99.2

INDEX TO AMAZE'S FINANCIAL STATEMENTS

Financial Statements

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Report of Independent Registered Public Accounting Firm

To the Shareholders and the Board of Directors of
Amaze Software, Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheet of Amaze Software, Inc. (the "Company") as of December 31, 2023, and 2022, and the related consolidated statements of operations and comprehensive loss, stockholders' equity and cash flows for the years then ended, and the related notes (collectively referred to as the "consolidated financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2023, and 2022, and the results of its operations and its cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

Basis for Opinion

These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audit. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) ("PCAOB") and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits, we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audit included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audit provides a reasonable basis for our opinion.

Critical Audit Matters

Critical audit matters are matters arising from the current period audit of the consolidated financial statements that were communicated or required to be communicated to the audit committee and that (1) relate to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective, or complex judgements. We determined that there are no critical audit matters.

/s/Bush & Associates CPA LLC

We have served as the Company's auditor since 2024.
Henderson, Nevada
January 4, 2025

AMAZE SOFTWARE, INC.
CONSOLIDATED BALANCE SHEETS
December 31, 2023 and 2022

	December 31, 2023	December 31, 2022
Assets		
Current assets		
Cash	$ 1,009,802	$ 8,646,855
Accounts receivable	399,132	480,384
Interest receivable	-	309,407
Prepaid expenses	84,059	500,220
Total current assets	1,492,993	9,936,866
Fixed assets, net	632,712	1,028,775
Intangible assets, net	96,608	112,657
Prepaid expenses and other (long-term)	268,799	300,129
Total assets	$ 2,491,112	$ 11,378,427
Liabilities, and stockholders' deficit		
Current liabilities		
Accounts payable	$ 3,450,225	$ 2,201,701
Accrued payroll	451,683	302,408
Accrued commissions	2,698,089	3,725,285
Accrued expenses	2,914,539	3,735,235
Accrued sales tax	1,366,883	791,073
Accrued interest	388,287	212,226
Customer deposits	638,281	1,347,146
Note payable, current portion	482,143	1,858,956
Deferred revenue	1,211	2,506
Total current liabilities	12,391,341	14,176,536
Long-term liabilities		
Note payable, net of current portion	2,899,424	2,319,789
Total liabilities	15,290,765	16,496,325
Stockholders' deficit		
Series A preferred stock, $0.001 par value – 54,416,293 and 44,756,496 shares issued and outstanding at December 31, 2023 and 2022, respectively	54,416	44,756
Common stock, $0.001 par value – 4,927,766 and 4,318,080 shares issued and outstanding at December 31, 2023 and 2022, respectively	4,928	4,318
Additional paid-in capital	68,559,789	58,164,697
Accumulated deficit	(81,418,786)	(63,331,669)
Total stockholders' deficit	(12,799,653)	(5,117,898)
Total liabilities and stockholders' deficit	$ 2,491,112	$ 11,378,427

AMAZE SOFTWARE, INC
CONSOLIDATED STATEMENTS OF OPERATIONS
For the Years Ended December 31, 2023 and 2022

	Year ended December 31,	
	2023	**2022**
Revenue	$ 31,952,480	$ 14,932,679
Cost of revenue	19,836,141	7,979,341
Gross profit	12,116,339	6,953,338
Selling, general and administrative expenses	28,115,616	13,202,589
Equity-based compensation	1,925,321	1,392,307
Depreciation and amortization	411,149	89,346
Operating loss	(18,335,747)	(7,730,904)
Other income (expense)	642,676	(7,456,063)
Interest expense	394,046	160,220
Net loss	$ (18,087,117)	$ (15,347,187)
Weighted average shares outstanding		
Basic	52,456,003	40,934,394
Diluted	52,456,003	40,934,394
Net loss per share - basic	$ (0.34)	$ (0.37)
Net loss per share - diluted	$ (0.34)	$ (0.37)

AMAZE SOFTWARE, INC
CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY (DEFICIT)
For the Years Ended December 31, 2023 and 2022

	Preferred Stock – Series A		Common Stock		Additional Paid-In Capital	Accumulated Deficit	Total
	Shares	Amount	Shares	Amount			
Balances at December 31, 2021	37,479,163	$ 37,479	65,933	$ 66	$ 50,615,932	$ (47,984,482)	$ 2,668,995
Issuance of common stock	-	-	4,252,147	4,252	-	-	4,252
Issuance of preferred stock	7,277,333	7,277	-	-	6,156,458	-	6,163,735
Equity-based compensation	-	-	-	-	1,392,307	-	1,392,307
Net Loss	-	-	-	-	-	(15,347,187)	(15,347,187)
Balances at December 31, 2022	44,756,496	44,756	4,318,080	4,318	58,164,697	(63,331,669)	(5,117,898)
Issuance of common stock	-	-	609,686	610	3,501	-	4,111
Issuance of preferred stock	9,659,797	9,660	-	-	8,466,270	-	8,475,930
Equity-based compensation	-	-	-	-	1,925,321	-	1,925,321
Net loss	-	-	-	-	-	(18,087,117)	(18,087,117)
Balances at December 31, 2023	54,416,293	$ 54,416	4,927,766	$ 4,928	$ 68,559,789	$ (81,418,786)	$ (12,799,653)

AMAZE SOFTWARE, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
For the Years Ended December 31, 2023 and 2022

	2023	2022
Cash flows from operating activities		
Net loss	$ (18,087,117)	$ (15,347,187)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	411,149	89,346
Equity-based compensation	1,925,321	1,392,307
Gain on disposal of fixed assets	(31,774)	-
Gain on extinguishment of debt	(615,980)	(477,111)
Amortization of debt discount	41,044	336,043
Changes in operating assets and liabilities		
Accounts receivable	81,252	(480,384)
Interest receivable	309,407	(309,407)
Prepaid expenses and other	447,491	(696,710)
Accounts payable	1,331,548	2,135,543
Accrued compensation	149,275	116,813
Accrued payroll	(1,027,196)	3,725,285
Accrued expenses	(903,719)	3,566,520
Accrued sales tax	575,810	791,073
Customer deposits	(708,865)	1,347,146
Deferred revenue	(1,295)	(1,289)
Accrued interest	176,061	163,745
Net cash used in operating activities	(15,927,588)	(3,648,267)
Cash flows from investing activities		
Proceeds from sale of fixed assets	46,000	-
Purchase of fixed assets	(18,298)	(1,096,516)
Net cash used in investing activities	27,702	(1,096,516)
Cash flows from financing activities		
Proceeds from issuance of common shares	4,111	4,252
Proceeds from issuance of preferred shares	239,091	6,156,458
Proceeds from note payable	9,736,263	3,143,250
Payments on note payable	(1,716,632)	(824,629)
Net cash provided by financing activities	8,262,833	8,479,331
Net decrease in cash	(7,637,053)	3,734,548
Cash - beginning of period	8,646,855	4,912,307
Cash - end of period	$ 1,009,802	$ 8,646,855

1. DESCRIPTION OF BUSINESS

Nature of Business

Amaze Software, Inc. (the "Company" or "Amaze") is an innovative software company dedicated to empowering creators by providing comprehensive software solutions and services that facilitate e-commerce, social commerce, and integrated commerce selling experiences. Established in 2011 under the name Famous Industries, the company rebranded to Amaze in 2021 to better reflect its mission and broaden its focus on serving creators, entrepreneurs, and a diverse range of users seeking to build and enhance their online brands.

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation

The Company's financial statements have been prepared and are presented in accordance with United States generally accepted accounting principles ("U.S. GAAP"). The financial statements include, in the opinion of management, all adjustments, consisting of normal and recurring items, necessary for the fair presentation of the financial statements. In certain instances, amounts reported in prior period financial statements have been reclassified to conform to the current financial statement presentation.

Principles of Consolidation

The accompanying consolidated financial statements have been prepared in accordance with Generally Accepted Accounting Principles ("GAAP") in the United States of America ("U.S.") as promulgated by the Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") and with the rules and regulations of the U.S. Securities and Exchange Commission ("SEC").

The accompanying consolidated financial statements include the accounts of Amaze Software, Inc. and Amaze Holding LLC, which are consolidated due to direct ownership.

Liquidity and Capital Resources

As of December 31, 2023, the Company maintained $1 million in cash reserves with a working capital deficiency of $11 million. This reflects a strategic allocation of resources to support operational growth and investment in key business areas. In comparison, as of December 31, 2022, the Company had $9 million in cash and a working capital deficit of $4 million. The change was primarily driven by a targeted deployment of $7.6 million, ensuring the Company's continued ability to execute its long-term strategy and sustain its market position.

The Company believes that its existing cash, coupled with additional capital raised through debt financing, will provide adequate liquidity to support ongoing operations and growth initiatives for at least 12 months from the filing of this report. Management remains focused on capital efficiency and cash flow optimization, ensuring that financial resources are utilized effectively to drive operational performance and revenue expansion.

As of December 31, 2023, the Company had $12.4 million in current liabilities, reflecting its commitment to fulfilling short-term obligations while maintaining operational flexibility. The breakdown of these liabilities includes:

- $5.5 million in vendor payables and accrued payroll,
- $2.7 million in accrued commissions,
- $1.4 million in accrued sales tax, and
- $482,000 as the current portion of notes payable.

The Company reported an accumulated deficit of $81 million as of December 31, 2023, reflecting the investments made in product development, strategic initiatives, and market expansion. Management is actively exploring opportunities to strengthen the Company's capital structure by securing additional funding through strategic partnerships, equity financing, and revenue-driven growth. While there is an expectation for additional capital needs, the Company remains proactive in identifying favorable financing opportunities, ensuring alignment with its long-term objectives.

Management is confident in the Company's ability to navigate its financial landscape effectively, leveraging a combination of cost optimizations, revenue enhancements, and capital market strategies. Although external financing may be required to further accelerate growth, the Company is well-positioned to capitalize on favorable market conditions and strategic business opportunities.

While these factors present financial challenges, they also underscore the Company's ongoing commitment to strengthening its financial position and enhancing long-term sustainability. The accompanying financial statements do not include any adjustments related to the potential recoverability of assets, classification of liabilities, or other financial modifications that may be necessary under a different operating scenario.

Accounting Estimates

Management uses estimates and assumptions in preparing these financial statements in accordance with U.S. GAAP. Those estimates and assumptions affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities, and the reported revenues and expenses. Actual results could differ from those estimates.

Cash

The Company maintains its cash in accounts at financial institutions, which may, at times, exceed amounts insured by the Federal Deposit Insurance Corporation. The Company has not experienced any losses in such accounts and believes it is not exposed to any significant credit risk.

Accounts Receivable

Accounts receivable consists of amounts owed to the Company for sales of the Company's services on credit and are reported at net realizable value. Credit terms are extended to customers in the normal course of business. The Company estimates allowances for future returns and doubtful accounts based upon historical experience and its evaluation of the current status of receivables. Accounts considered uncollectible are written off against the allowance. As of December 31, 2023 and 2022 there was no allowance for doubtful accounts.

Revenue recognition

The Company's total revenue reflects the sale of merchandise sales, digital product sales and shipping domestically and internationally. Revenues are recognized as the Company transfers control of promised goods or services to sellers, in an amount that reflects the consideration the Company expects to be entitled to in exchange for those goods or services. Each contract includes a single performance obligation to transfer control of the product to the customer. Control is transferred when the product is either shipped or delivered, depending on the shipping terms, at which point the Company recognizes the transaction price for the product as revenue. The Company has elected to account for shipping and handling as a fulfillment activity, with amounts billed to customers for shipping and handling included in total revenue.

ASC 606 notes that when another party is involved in providing goods or services to a customer, the entity should determine whether the nature of its promise is a performance obligation to provide the specified goods or services itself (that is, the entity is a principal) or to arrange for those goods or services to be provided by the other party (that is, the entity is an agent). The Company does not bear responsibility for inventory losses and does not have pricing determination; therefore, the Company would be considered the agent and revenue should be recognized as net sales.

Products are sold for cash or on credit terms. The Company has elected the practical expedient to not account for significant financing components as its payment terms are less than one year, and the Company determines the terms at contract inception. The Company's sales terms do not allow for the right of return.

The following table presents the percentages of total revenue disaggregated by sales channels for the years ended December 31, 2023 and 2022:

	2023	2022
Long-tail	80%	84%
Managed services	20%	16%
Total	100%	100%

Fair Value of Financial Instruments

The Company's accounting for fair value measurements of assets and liabilities that are recognized or disclosed at fair value in the financial statements on a recurring or nonrecurring basis adheres to the Financial Accounting Standards Board (FASB) fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level 1 measurements) and the lowest priority to measurements involving significant unobservable inputs (Level 3 measurements). The three levels of the fair value hierarchy are as follows:

- Level 1 Inputs: Unadjusted quoted prices in active markets for identical assets or liabilities accessible to the Company at the measurement date.
- Level 2 Inputs: Other than quoted prices included in Level 1 inputs that are observable for the asset or liability, either directly or indirectly, for substantially the full term of the asset or liability.
- Level 3 Inputs: Unobservable inputs for the asset or liability used to measure fair value to the extent that observable inputs are not available, thereby allowing for situations in which there is little, if any, market activity for the asset or liability at measurement date.

The level in the fair value hierarchy within which a fair measurement in its entirety falls is based on the lowest level input that is significant to the fair value measurement in its entirety.

The carrying values of cash, accounts receivable, accounts payable, deferred revenue and other financial working capital items approximate fair value at December 31, 2024 and 2023, due to the short maturity nature of these items.

Fixed Assets

Fixed assets are stated at cost, less accumulated depreciation. Additions and improvements to property and equipment are capitalized at cost. Depreciation of owned assets are computed using the straight-line method over the estimated useful lives. The cost of assets sold or retired, and the related accumulated depreciation are removed from the accounts and any resulting gains or losses are reflected in other income (expense) for the year. Expenditures on maintenance and repairs are charged to expense as incurred.

Intangible Assets

The Company capitalizes the fair value of intangible assets acquired in business combinations. Intangible assets are amortized on a straight-line basis over their estimated economic useful lives, generally the contract term. The Company performs valuations of assets acquired and liabilities assumed on each acquisition accounted for as a business combination and allocates the purchase price of each acquired business to its respective net tangible and intangible assets.

Long-lived Assets

Long-lived assets such as fixed assets and intangible assets are evaluated for impairment whenever events or changes in circumstances indicate that the carrying amount may not be recoverable. There were no triggering events and no impairments of long-lived assets for the years presented.

Customer Deposits

The Company records customer deposits when a customer makes a payment for a product purchase in advance of shipping goods. Revenue is recognized, and the customer deposit liability is reduced, once the shipment occurs and therefore this balance is related to customer orders that have not been fulfilled.

Accounts Payable

The Company records accounts payable at the invoice amount when goods or services are received, regardless of when payment is made. All vendor payables are recorded at their gross amount, with any discounts available being recognized as a separate income item when taken, and are typically due within 30 – 60 days.

Income Taxes

The Company recognizes uncertain tax positions in accordance with ASC 740 on the basis of evaluating whether it is more likely than not that the tax positions will be sustained upon examination by tax authorities. For those tax positions that meet the more-likely-than not recognition threshold, the Company recognizes the largest amount of tax benefit that is more than 50 percent likely to be realized upon ultimate settlement. The Company recognizes interest and/or penalties related to uncertain tax positions in income tax expense. There were no uncertain tax positions as of December 31, 2023 and 2022, and as such, no interest or penalties were recorded to income tax expense. As of December 31, 2023 and 2022, the Company has no unrecognized tax benefits. There are no unrecognized tax benefits included on the balance sheet that would, if recognized, impact the effective tax rate. The Company does not anticipate there will be a significant change in unrecognized tax benefits within the next 12 months.

Equity-Based Compensation

The Company measures equity-based compensation cost, according to ASC 718, at the grant date based on the fair value of the award and recognizes the compensation expense over the requisite service period, which is generally the vesting period. The Company recognizes any forfeitures as they occur.

See Note 9 for further discussion of equity-based compensation incurred in 2024 and 2023.

Advertising and Marketing

The Company expenses the costs of advertising and marketing as incurred. Advertising and marketing expenses were approximately $3.1 million and $1.1 million for the years ended December 31, 2023 and 2022, respectively.

Recently Issued Accounting Pronouncements

In June 2016, the FASB issued ASU No. 2016-13, Financial Instruments–Credit Losses (Topic 326), Measurement of Credit Losses on Financial Instruments, and also issued subsequent amendments to the initial guidance, collectively, ASC 326, to replace the incurred loss impairment methodology in current U.S. GAAP with a methodology that requires the reflection of expected credit losses and will also require consideration of a broader range of reasonable and supportable information to determine credit loss estimates. For many entities with financial instruments, the standard will require the use of a forward-looking expected loss model rather than the incurred loss model for recognizing credit losses, which may result in the earlier recognition of credit losses on financial instruments. The Company adopted this guidance during the quarter ended March 31, 2023, which had no material impact on the financial statements.

3. LOSS PER SHARE

Basic net loss per share is determined by dividing net loss attributable to common shareholders by the weighted-average shares outstanding during the period. Diluted EPS reflects potential dilution and is computed by dividing net loss by the weighted average number of common shares outstanding during the period increased by the numbers of additional common shares that would have been outstanding if all potential common shares had been issued and were dilutive. However, potentially dilutive securities are excluded from the computation of diluted EPS to the extent that their effect is anti-dilutive. The following table shows the components of diluted shares for the periods ending:

	December 31, 2023	December 31, 2022
Numerator:		
Net loss	$ (18,087,117)	$ (15,347,187)
Denominator:		
Basic – weighted shares outstanding	52,456,003	40,934,394
Dilutive effect from shares authorized	-	-
Diluted – weighted shares outstanding	52,456,003	40,934,394
Basic loss per share	$ (0.34)	$ (0.37)
Diluted loss per share	$ (0.34)	$ (0.37)

4. PREPAID EXPENSES

Prepaid expenses consist of the following at December 31:

	2023	2022
Prepaid subscription and service fees	$ 53,788	$ 482,677
Deposits	30,271	17,543
Total current prepaid expenses and other	84,059	500,220
Security deposits	268,799	300,129
Total	$ 352,858	$ 800,349

5. FIXED ASSETS

Fixed assets consisted of the following at December 31:

	2023	2022
Facilities equipment	$ 917,229	$ 992,014
Computer equipment	-	91,982
	917,229	1,083,996
Accumulated depreciation	(284,517)	(55,221)
Total	$ 632,712	$ 1,028,775

The Company has a useful life of 2-10 years for equipment. Depreciation was approximately $395,000 and $71,000 for the years ended December 31, 2023 and 2022, respectively.

6. INTANGIBLE ASSETS

Intangible assets consisted of the following at December 31:

	2023	2022
Domain name	$ 146,389	$ 146,389
Developed technology	6,995	6,995
IP patent	78,274	78,273
	231,658	231,658
Accumulated amortization	(135,050)	(119,001)
Total	$ 96,608	$ 112,657

The Company has a useful life of 5-10 years for intangibles. Amortization was approximately $16,000 and $19,000 for the years ended December 31, 2023 and 2022, respectively.

The Company's estimated future amortization of intangible assets is as follows:

Years Ending December 31,	Amount
2024	$ 16,049
2025	16,049
2026	16,049
2027	16,049
2028	14,650
Thereafter	17,764
Total	$ 96,608

7. NOTES PAYABLE

The following table is a summary of the Company's outstanding debts as of December 31:

	2023	2022
Convertible notes	2,899,424	1,900,000
ACH Capital West, LLC	482,143	-
Clearco note	-	2,319,789
Unamortized debt issuance costs	-	(41,044)
Total	3,381,567	4,178,745
Less: current portion	(482,143)	(1,858,956)
Long-term debt	$ 2,899,424	$ 2,319,789

In 2021, the Company entered into Convertible Note Purchase Agreements (the 2021 Convertible Note Purchase Agreements") with multiple accredited investors, pursuant to which the Company agreed to sell a principal amount of $1,900,000 convertible promissory notes that will be convertible into shares of the Company's Series A-1 Preferred Stock. The Notes bear interest of 8% and are due and payable on demand. Each Note will be converted into Series A-1 Preferred Stock at a conversion price equal to $0.66883 at closing.

In 2023, the Company entered into Note Purchase Agreements (the "2023 Note Purchase Agreements") with multiple accredited investors, pursuant to which the Company agreed to sell a principal amount of $7,000,000 of convertible promissory notes. In September 2023, these notes and the interest due on them were converted to Series A-3 Preferred Stock.

The Company, as part of the asset purchase agreement in 2022, assumed the obligations of Teespring, Inc. under the Revenue Share Agreement dated May 30, 2022 between Teespring, Inc. and CFT Clear Finance Technology Corp. ("Clearco") as amended by Amendment No. 1 entered by Clearco, Teespring, and Amaze Holding Company LLC on October 31, 2022. The Revenue Share Agreement was terminated pursuant to a termination letter dated August 31, 2023 between Clearco and the Company and all amounts outstanding were deemed paid in full. The Company recognized a gain on debt forgiveness of approximately $621,000 for the year ended December 31, 2023.

The Company submitted a loan forgiveness application to the U.S. Small Business Administration ("SBA") for the Paycheck Protection Program (the "PPP") and was approved for full forgiveness in 2022 and therefore recognized a gain on debt extinguishment of approximately $477,000.

In December 2023, the Company issued a note payable for the principal amount of $500,000 with ACH Capital West, LLC. The term was 7 months but in February 2024, the Company refinanced and received additional funding with the principal balance becoming $1,000,000. In July 2024, the Company refinanced the agreement to receive additional funding and adjust the principal balance to $1,600,000 with a due date of February 2025. In February 2025, the Company refinanced a principal balance of $865,000 with $1,124,500 due over 36 weeks.

As of December 31, 2023 and 2022, the unamortized debt discount was $0 and $41,044, respectively. The Company recognized approximately $41,000 and $336,000 of debt discount in interest expense for the years ended December 31, 2023 and 2022, respectively.

Principal maturities of the Company's notes payable are as follows:

Years Ending December 31,		Amount
2024	$	482,143
2025		2,899,424
2026		-
2027		-
Total	$	3,381,567

8. STOCKHOLDERS' EQUITY

Series A Convertible Preferred Stock

On July 12, 2022, the Company entered into a Stock Purchase Agreement with ten accredited investors (the "Purchasers") pursuant to which the Company agreed to issue and sell in a private placement (the "Offering") shares of Series A-3 Preferred Stock. Pursuant to the Stock Purchase Agreement, the Purchasers collectively agreed to purchase up to 4,661,028 shares of Series A-3 Preferred Stock at a per share purchase price equal to $0.92 for a total gross proceeds of $4,305,162 at the initial closing of the Offering (the "Initial Closing"), which occurred on July 12, 2022. The Stock Purchase Agreement was amended and restated on October 24, 2022, for the Company to issue and sell to six of the Purchasers and additional new accredited investor an additional 2,670,438 shares of Series A-3 Preferred Stock at a per share purchase price equal to $0.923652 for a total gross proceeds of $2,466,555 at a second closing, which occurred on October 24, 2022.

In September 2023, approximately $8.2 million in convertible debt was converted into 9,605,664 shares of Series A-3 Preferred Stock pursuant to their Convertible Promissory Notes from 2023.

9. EQUITY-BASED COMPENSATION

Stock Options

During the year ended December 31, 2023, the Company issued stock options to purchase 4,560,173 shares of its common stock to various employees of the Company. During the year ended December 31, 2022, the Company issued stock options to purchase 10,034,498 shares of common stock to various employees of the Company. Most options vest over a period of four years, with 25% vesting after one year and the remaining 75% vesting in equal monthly installments over the following 36 months and are exercisable for a period of ten years. Stock based compensation for stock options is estimated at the grant date based on the fair value calculated using the Black-Scholes method.

In May 2022, the Company issued stock options to purchase 200,000 shares of its common stock to board members of the Company. These options vest over 3 years in equal monthly installments and are exercisable for a period of ten years.

In April 2023, the Company issued stock options to purchase 200,000 shares of its common stock to an advisor of the Company. These options vested immediately and exercisable for a period of then years.

	Number of Options	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (Years)
Outstanding at December 31, 2021	2,361,680	$ 0.19	7.73
Granted	10,234,498	0.07	10.00
Exercised	(28,423)	-	-
Forfeited	(1,747,664)	-	-
Outstanding at December 31, 2022	10,820,091	$ 0.08	9.30
Granted	4,560,173	0.23	10.00
Exercised	(29,686)	-	-
Forfeited	(5,442,537)	-	-
Outstanding at December 31, 2023	9,908,041	$ 0.13	8.53
Exercisable at December 31, 2023	5,534,320	$ 0.13	4.80

10. INCOME TAXES

For the year ended December 31, 2023 and 2022, no income tax expense or benefit was recorded related to income taxes due to the Company's overall operating results and the change in the valuation allowance. The components of income tax expense (benefit) for the year ended December 31, 2023 and 2022 are as follows:

	2023	2022
Current income tax expense (refund) - federal	$ -	$ -
Current income tax expense (refund) - state	-	-
Total current income tax expense (refund)	-	-
Deferred income tax expense (benefit) - federal	-	-
Deferred income tax expense (benefit) - state	-	-
Total deferred income tax expense (benefit)	-	-
Total provision for income taxes	$ -	$ -

11. CUSTOMER CONCENTRATION

For the year ended December 31, 2022, one creator was responsible for 23% of the Company's gross sales however for the year ended December 31, 2023, no one source was responsible for more than 10% of the Company's gross sales.

12. COMMITMENT AND CONTINGENCIES

The Company accrues a liability and charges operations for the estimated costs of contingent liabilities, including adjudication or settlement of various asserted and unasserted claims existing as of the balance sheet date, where there is a reasonable possibility that a loss has been incurred and the loss (or range of probable loss) is estimable.

From time to time the Company may become subject to threatened and/or asserted claims arising in the ordinary course of our business. Other than the matter described below, management is not aware of any matters, either individually or in the aggregate, that are reasonably likely to have a material impact on the Company's financial condition, results of operations or liquidity.

Legal Proceedings

The Company is subject to legal disputes and claims that arise in the ordinary course of business. The Company has resolved all litigation filed against it in 2022 and 2023 except for the following matter:

G&I IX Aviation LLC v. Teespring, Inc. et al.

Amaze Holding Company LLC is a defendant in G&I IX Aviation LLC v. Teespring, Inc. et al., Case No. 23-CI-00220 in Boone County Circuit Court, Kentucky. When Amaze acquired certain assets of Teespring, Inc., pursuant to an Asset Purchase Agreement in November 2022, Teespring, Inc. leased commercial property located at 1201 Aviation Boulevard, Hebron, Kentucky, owned by Plaintiff G&I IX Aviation LLC ("G&I"). During and after APA negotiations, Amaze attempted to assume the lease, but Plaintiff refused to consent to the assignment of the lease unless Amaze paid previous obligations the landlord claimed Teespring. Inc. owed. Ultimately, G&I and Amaze never signed a consent to assignment of the lease. Plaintiff provided a notice of default on December 15, 2022, and filed its complaint against Teespring, Inc. and Amaze on February 1, 2023. On June 12, 2024, the court denied plaintiff's motion for summary judgment against Amaze. The matter remains in discovery.

13. SUBSEQUENT EVENTS

The following legal disputes arose subsequent to December 31, 2023:

MyLocker.com, L.L.C. v. Amaze Holding Company LLC

On September 23, 2024, MyLocker.com L.L.C. ("MyLocker") filed a complaint against Amaze Holding Company LLC, Case No. 24-013888, in Wayne County Circuit Court, Michigan. Amaze and MyLocker had entered into a Print Partner Services Level Agreement on June 12, 2023, under which MyLocker agreed to accept order fulfillment assignments from Amaze. MyLocker filed its September 23, 2024 complaint seeking payment of invoices issued to Amaze on August 8, 2024, August 22, 2024, September 6, 2024, and September 16, 2024. On November 11, 2024, the court entered a default judgment against Amaze in the amount of $81,772.24.

Secured Promissory Notes with Fresh Vine Wine, Inc

The Company and Fresh Vine Wine, Inc. ("Fresh Vine") entered into a promissory note (the "Fresh Vine Note") effective October 28, 2024, under which Fresh Vine agreed to lend to the Company the principal sum of up to $3.5 million. The Fresh Vine Note bears interest at 6.00% per annum until the closing date of the Business Combination (defined below). If the Business Combination does not close, the interest rate increases to 12% per annum from the date that negotiations cease. The unpaid principal plus accrued interest is due and payable on the date that is 9 months after the date on which Fresh Vine or the Company provides notice to the other that negotiations have ceased if the Business Combination is not closed. Provided there is no event of default, the Fresh Vine note will be forgiven on the date the Business Combination Agreement (detailed below) closes. The Fresh Vine Note is secured by all of the assets of Amaze Holding Company LLC.

Business Combination Agreement with Adifex

Fresh Vine and Adifex Holdings LLC, a Delaware limited liability company, or "Adifex", have entered into a Business Combination Agreement, dated November 3, 2024, under which Fresh Vine formed a direct, wholly owned subsidiary, Amaze Holdings Inc. ("Pubco"), which in turn formed two direct, wholly owned subsidiaries, VINE Merger Sub Inc. ("VINE Merger Sub") and Adifex Merger Sub LLC ("Adifex Merger Sub"). Upon satisfaction or waiver of the conditions to closing in the Business Combination Agreement, VINE Merger Sub will consummate the VINE Merger with and into Fresh Vine, with Fresh Vine surviving the merger as a direct, wholly owned subsidiary of Pubco, and

Adifex Merger Sub will consummate the Adifex Merger with and into Adifex with Adifex surviving the merger as a direct, wholly owned subsidiary of Pubco. Upon consummation of the Business Combination, Fresh Vine and Adifex will each be a wholly owned subsidiary of Pubco and, as a result, Pubco will hold what today are Fresh Vine's and Adifex' independent businesses. Also, at the effective time of the VINE merger, (each outstanding warrant to purchase shares of Fresh Vine capital stock will be exchanged (or otherwise amended) for a warrant to purchase shares of Pubco common stock.

The Business Combination Agreement contains customary representations, warranties and covenants, including covenants obligating the Company, during the period prior to closing, to conduct its business and operations in the ordinary course of business and not to engage in certain specified activities without Fresh Vine's prior consent.

Consummation of the Business Combination is subject to the satisfaction or waiver of certain closing conditions, including without limitation, approval by the Fresh Vine's stockholders of the Business Combination Agreement, including the Business Combination, completion of the acquisition of Amaze by Adifex, and the Company having raised up to $10,000,000 through the sale of its equity or debt securities to cover transaction expenses and for working capital purposes.

The Business Combination Agreement may be terminated in certain limited circumstances including (i) by mutual written consent of Fresh Vine and Adifex; (ii) by either Fresh Vine or Adifex if the VINE Merger and the Adifex Merger have not have been consummated by April 30, 2025 (subject to extension) (iii) by either Fresh Vine or Adifex if a court of competent jurisdiction or governmental authority has issued a final and nonappealable order, or taken any other action, having the effect of permanently restraining, enjoining, or otherwise prohibiting any of the transactions contemplated by the Business Combination Agreement; (iv) by either Fresh Vine or Adifex upon a breach of any representation, warranty, covenant, or agreement in the Business Combination Agreement by the other party; or (v) by Fresh Vine, upon Fresh Vine's board of directors authorizing Fresh Vine to enter into a permitted alternative agreement in the manner set forth in the Business Combination Agreement.

Exhibit 99.3

INDEX TO AMAZE'S FINANCIAL STATEMENTS

Unaudited Interim Financial Statements

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Unaudited Interim Financial Statements

AMAZE SOFTWARE, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
September 30, 2024 and December 31, 2023

	September 30, 2024 (Unaudited)	December 31, 2023
Assets		
Current assets		
Cash	$ 369,179	$ 1,009,802
Accounts receivable	77,715	399,132
Accounts receivable – related party	180,642	-
Prepaid expenses	323,609	84,059
Total current assets	951,145	1,492,993
Fixed assets, net	452,591	632,712
Intangible assets, net	173,504	96,608
Prepaid expenses and other (long-term)	268,370	268,799
Total assets	$ 1,845,610	$ 2,491,112
Liabilities, and stockholders' deficit		
Current liabilities		
Accounts payable	$ 4,857,580	$ 3,450,225
Accrued payroll	500,102	451,683
Accrued commissions	2,224,803	2,698,089
Accrued expenses	2,017,844	2,914,539
Accrued sales tax	623,908	1,366,883
Accrued interest	540,804	388,287
Customer deposits	2,662,284	638,281
Note payable, current portion	1,257,143	482,143
Deferred revenue	1,129	1,211
Total current liabilities	14,685,597	12,391,341
Long-term liabilities		
Note payable, net of current portion	7,949,399	2,899,424
Total long-term liabilities	7,949,399	2,899,424
Total liabilities	22,634,996	15,290,765
Stockholders' deficit		
Series A preferred stock, $0.001 par value – 54,416,293 shares issued and outstanding at September 30, 2024 and December 31, 2023	54,416	54,416
Common stock, $0.001 par value – 5,043,550 and 4,927,766 shares issued and outstanding at September 30, 2024 and December 31, 2023, respectively (1)	5,044	4,928
Additional paid-in capital	69,789,461	68,559,789
Accumulated deficit	(90,638,307)	(81,418,786)
Total stockholders' deficit	(20,789,386)	(12,799,653)
Total liabilities and stockholders' deficit	$ 1,845,610	$ 2,491,112

(1) Subject to the terms and conditions of the Business Combination Agreement, at the Purchaser Merger Effective Time, each issued and outstanding Fresh Vine, Inc. equity interest shall be converted automatically into a number of shares of Pubco Common Stock.

AMAZE SOFTWARE, INC.
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
For the three and nine months ended September 30, 2024 and 2023
(Unaudited)

	Three months ended September 30,		Nine months ended September 30,	
	2024	**2023**	**2024**	**2023**
Revenue	$ 4,070,952	$ 7,425,000	$ 15,059,308	$ 23,890,535
Cost of revenues	2,208,061	4,472,992	8,551,911	14,943,167
Gross profit	1,862,891	2,952,008	6,507,397	8,947,368
Selling, general and administrative expenses	5,112,536	6,498,210	13,898,486	22,299,281
Equity-based compensation	409,326	425,744	1,229,672	1,546,018
Depreciation and amortization	62,433	103,848	205,118	312,450
Operating loss	(3,721,404)	(4,075,794)	(8,825,879)	(15,210,381)
Other income	607,639	604,027	624,122	619,912
Interest expense	482,705	148,698	1,017,764	308,679
Net loss	$ (3,596,470)	$ (3,620,465)	$ (9,219,521)	$ (14,899,148)
Weighted average shares outstanding				
Basic	59,459,843	52,084,243	59,429,939	50,135,062
Diluted	59,459,843	52,084,243	59,429,939	50,135,062
Net loss per share – basic	$ (0.06)	$ (0.07)	$ (0.16)	$ (0.30)
Net loss per share – diluted	$ (0.06)	$ (0.07)	$ (0.16)	$ (0.30)

AMAZE SOFTWARE, INC.
STATEMENTS OF CHANGES IN STOCKHOLDERS' DEFICIT
For the Nine Month Periods Ended September 30, 2024 and 2023
(UNAUDITED)

	Preferred Stock Series A		Common Stock		Additional Paid-In	Accumulated	
	Shares	Amount	Shares	Amount	Capital	Deficit	Total
Balance, December 31, 2022	44,756,496	$ 44,756	4,318,080	$ 4,318	$ 58,164,697	$ (63,331,669)	$ (5,117,898)
Issuance of common stock	-	-	608,437	609	3,501	-	4,110
Issuance of preferred stock	9,659,797	9,660	-	-	8,466,270	-	8,475,930
Equity-based compensation	-	-	-	-	1,546,018	-	1,546,018
Net loss	-	-	-	-	-	(14,899,148)	(14,899,148)
Balance, September 30, 2023	54,416,293	$ 54,416	4,926,517	$ 4,927	$ 68,180,486	$ (78,230,817)	$ (9,990,988)

	Preferred Stock Series A		Common Stock		Additional Paid-In	Accumulated	
	Shares	Amount	Shares	Amount	Capital	Deficit	Total
Balance, December 31, 2023	54,416,293	$ 54,416	4,927,766	$ 4,928	$ 68,559,789	$ (81,418,786)	$ (12,799,654)
Issuance of common stock	-	-	115,784	116	-	-	116
Equity-based compensation	-	-	-	-	1,229,672	-	1,229,672
Net loss	-	-	-	-	-	(9,219,521)	(9,219,521)
Balance, September 30, 2024	54,416,293	$ 54,416	5,043,550	$ 5,044	$ 69,789,461	$ (90,638,307)	$ (20,789,387)

AMAZE SOFTWARE, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
For the Nine Months Ended September 30, 2024 and 2023
(UNAUDITED)

	Nine Months Ended September 30,	
	2024	**2023**
Cash flows from operating activities		
Net loss	$ (9,219,521)	$ (14,899,148)
Adjustments to reconcile net loss to net cash used in operating activities:		
Equity-based compensation	1,229,672	1,546,018
Depreciation and amortization	205,118	312,450
Gain on extinguishment of debt	-	(621,014)
Amortization of debt discount	-	41,044
Changes in operating assets and liabilities		
Accounts receivable	140,775	83,181
Interest receivable	-	309,407
Prepaid expenses and other	(239,121)	95,917
Accounts payable	1,407,355	1,272,596
Accrued payroll	48,419	147,571
Accrued commissions	(473,286)	(1,227,173)
Accrued expenses	(896,695)	(999,074)
Accrued sales tax	(742,975)	306,572
Customer deposits	2,024,003	(907,923)
Deferred revenue	(82)	(888)
Accrued interest	152,517	308,679
Net cash used in operating activities	(6,363,821)	(14,231,585)
Cash flows from investing activities		
Purchase of fixed assets	(101,893)	(18,298)
Net cash used in investing activities	(101,893)	(18,298)
Cash flows from financing activities		
Proceeds from issuance of common shares	116	3,694
Proceeds from issuance of preferred shares	-	50,000
Proceeds from note payable	7,649,975	8,736,839
Payments on note payable	(1,825,000)	(1,698,775)
Net cash provided by financing activities	5,825,091	7,091,758
Net decrease in cash	(640,623)	(7,158,125)
Cash - beginning of period	1,009,802	8,646,855
Cash - end of period	$ 369,179	$ 1,488,730

1. DESCRIPTION OF BUSINESS

Nature of Business

Amaze Software, Inc. (the "Company" or "Amaze") is an innovative software company dedicated to empowering creators by providing comprehensive software solutions and services that facilitate e-commerce, social commerce, and integrated commerce selling experiences. Established in 2011 under the name Famous Industries, the company rebranded to Amaze in 2021 to better reflect its mission and broaden its focus on serving creators, entrepreneurs, and a diverse range of users seeking to build and enhance their online brands.

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation

The Company's financial statements have been prepared and are presented in accordance with United States generally accepted accounting principles ("U.S. GAAP"). The financial statements include, in the opinion of management, all adjustments, consisting of normal and recurring items, necessary for the fair presentation of the financial statements. In certain instances, amounts reported in prior period financial statements have been reclassified to conform to the current financial statement presentation.

Principles of Consolidation

The accompanying consolidated financial statements have been prepared in accordance with Generally Accepted Accounting Principles ("GAAP") in the United States of America ("U.S.") as promulgated by the Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") and with the rules and regulations of the U.S. Securities and Exchange Commission ("SEC").

The accompanying consolidated financial statements include the accounts of Amaze Software, Inc. and Amaze Holding LLC, which are consolidated due to direct ownership.

Liquidity and Capital Resources

As of September 31, 2024, the Company had approximately $369,000 in cash and deficiency in working capital of $13.7 million. As of December 31, 2023, the Company had cash of $1 million and deficiency in working capital of approximately $10.9 million. The decrease in working capital was primarily due to the increase in accounts payable and customer deposits as these liabilities increased by $3.4 million.

Management recognizes that the Company must obtain additional resources to successfully integrate its business plans. Management plans to continue to raise funds and/or refinance the indebtedness to support our operations for the next 12 months and beyond. However, no assurances can be given that we will be successful.

Accounting Estimates

Management uses estimates and assumptions in preparing these financial statements in accordance with U.S. GAAP. Those estimates and assumptions affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities, and the reported revenues and expenses. Actual results could differ from those estimates.

Cash

The Company maintains its cash in accounts at financial institutions, which may, at times, exceed amounts insured by the Federal Deposit Insurance Corporation. The Company has not experienced any losses in such accounts and believes it is not exposed to any significant credit risk.

Accounts Receivable

Accounts receivable consists of amounts owed to the Company for sales of the Company's services on credit and are reported at net realizable value. Credit terms are extended to customers in the normal course of business. The Company estimates allowances for future returns and doubtful accounts based upon historical experience and its evaluation of the current status of receivables. Accounts considered uncollectible are written off against the allowance. As of September 30, 2024 and December 31, 2023 there was no allowance for doubtful accounts.

Revenue recognition

The Company's total revenue reflects the sale of merchandise sales, digital product sales and shipping domestically and internationally. Revenues are recognized as the Company transfers control of promised goods or services to sellers, in an amount that reflects the consideration the Company expects to be entitled to in exchange for those goods or services. Each contract includes a single performance obligation to transfer control of the product to the customer. Control is transferred when the product is either shipped or delivered, depending on the shipping terms, at which point the Company recognizes the transaction price for the product as revenue. The Company has elected to account for shipping and handling as a fulfillment activity, with amounts billed to customers for shipping and handling included in total revenue.

ASC 606 notes that when another party is involved in providing goods or services to a customer, the entity should determine whether the nature of its promise is a performance obligation to provide the specified goods or services itself (that is, the entity is a principal) or to arrange for those goods or services to be provided by the other party (that is, the entity is an agent). The Company does not bear responsibility for inventory losses and does not have pricing determination; therefore, the Company would be considered the agent and revenue should be recognized as net sales.

Products are sold for cash or on credit terms. The Company has elected the practical expedient to not account for significant financing components as its payment terms are less than one year, and the Company determines the terms at contract inception. The Company's sales terms do not allow for the right of return.

The following table presents the percentages of total revenue disaggregated by sales channels for the nine months ended September 30, 2024 and 2023:

	2024	2023
Long-tail	78%	81%
Managed services	22%	19%
Total	100%	100%

Fair Value of Financial Instruments

The Company's accounting for fair value measurements of assets and liabilities that are recognized or disclosed at fair value in the financial statements on a recurring or nonrecurring basis adheres to the Financial Accounting Standards Board (FASB) fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level 1 measurements) and the lowest priority to measurements involving significant unobservable inputs (Level 3 measurements). The three levels of the fair value hierarchy are as follows:

- Level 1 Inputs: Unadjusted quoted prices in active markets for identical assets or liabilities accessible to the Company at the measurement date.
- Level 2 Inputs: Other than quoted prices included in Level 1 inputs that are observable for the asset or liability, either directly or indirectly, for substantially the full term of the asset or liability.
- Level 3 Inputs: Unobservable inputs for the asset or liability used to measure fair value to the extent that observable inputs are not available, thereby allowing for situations in which there is little, if any, market activity for the asset or liability at measurement date.

The level in the fair value hierarchy within which a fair measurement in its entirety falls is based on the lowest level input that is significant to the fair value measurement in its entirety.

The carrying values of cash, accounts receivable, accounts payable, deferred revenue and other financial working capital items approximate fair value at September 30, 2024 and December 31, 2023, due to the short maturity nature of these items.

Fixed Assets

Fixed assets are stated at cost, less accumulated depreciation. Additions and improvements to property and equipment are capitalized at cost. Depreciation of owned assets are computed using the straight-line method over the estimated useful lives. The cost of assets sold or retired, and the related accumulated depreciation are removed from the accounts and any resulting gains or losses are reflected in other income (expense) for the period. Expenditures on maintenance and repairs are charged to expense as incurred.

Intangible Assets

The Company capitalizes the fair value of intangible assets acquired in business combinations. Intangible assets are amortized on a straight-line basis over their estimated economic useful lives, generally the contract term. The Company performs valuations of assets acquired and liabilities assumed on each acquisition accounted for as a business combination and allocates the purchase price of each acquired business to its respective net tangible and intangible assets.

Long-lived Assets

Long-lived assets such as fixed assets and intangible assets are evaluated for impairment whenever events or changes in circumstances indicate that the carrying amount may not be recoverable. There were no triggering events and no impairments of long-lived assets for the periods presented.

Customer Deposits

The Company records customer deposits when a customer makes a payment for a product purchase in advance of shipping goods. Revenue is recognized, and the customer deposit liability is reduced, once the shipment occurs and therefore this balance is related to customer orders that have not been fulfilled.

Accounts Payable

The Company records accounts payable at the invoice amount when goods or services are received, regardless of when payment is made. All vendor payables are recorded at their gross amount, with any discounts available being recognized as a separate income item when taken, and are typically due within 30 – 60 days.

Income Taxes

The Company recognizes uncertain tax positions in accordance with ASC 740 on the basis of evaluating whether it is more likely than not that the tax positions will be sustained upon examination by tax authorities. For those tax positions that meet the more-likely-than not recognition threshold, the Company recognizes the largest amount of tax benefit that is more than 50 percent likely to be realized upon ultimate settlement. The Company recognizes interest and/or penalties related to uncertain tax positions in income tax expense. There were no uncertain tax positions as of September 30, 2024 and December 31, 2023, and as such, no interest or penalties were recorded to income tax expense. As of September 30, 2024, the Company has no unrecognized tax benefits. There are no unrecognized tax benefits included on the balance sheet that would, if recognized, impact the effective tax rate. The Company does not anticipate there will be a significant change in unrecognized tax benefits within the next 12 months.

Advertising and Marketing

The Company expenses the costs of advertising and marketing as incurred. Advertising and marketing expenses were approximately $368,000 and $713,000 for the three months ended September 30, 2024 and 2023, respectively and $640,000 and $2.7 million for the nine months ended September 30, 2024 and 2023, respectively.

3. LOSS PER SHARE

Basic net loss per share is determined by dividing net loss attributable to common shareholders by the weighted-average shares outstanding during the period. Diluted EPS reflects potential dilution and is computed by dividing net loss by the weighted average number of common shares outstanding during the period increased by the numbers of additional common shares that would have been outstanding if all potential common shares had been issued and were dilutive. However, potentially dilutive securities are excluded from the computation of diluted EPS to the extent that their effect is anti-dilutive. The following table shows the components of diluted shares for the periods ending:

	Three Months Ended		Nine Months Ended	
	September 30, 2024	September 30, 2023	September 30, 2024	September 30, 2023
Numerator:				
Net loss	$ (3,596,470)	$ (3,620,465)	$ (9,219,521)	$ (14,899,148)
Denominator:				
Basic – weighted shares outstanding	59,459,843	52,084,243	59,419,500	50,135,062
Dilutive effect from shares authorized	—	—	—	—
Diluted – weighted shares outstanding	59,459,843	52,084,243	59,419,500	50,135,062
Basic loss per share	$ (0.06)	$ (0.07)	$ (0.16)	$ (0.30)
Diluted loss per share	$ (0.06)	$ (0.07)	$ (0.16)	$ (0.30)

4. PREPAID EXPENSES

Prepaid expenses consist of the following at the periods presented:

	September 30, 2024	December 31, 2023
Prepaid subscription and service fees	$ 293,338	$ 53,788
Deposits	30,271	30,271
Total current prepaid expenses and other	323,609	84,059
Security deposits	268,370	268,799
Total	$ 591,979	$ 352,858

5. FIXED ASSETS

Fixed assets consisted of the following at the periods presented:

	September 30, 2024	December 31, 2023
Facilities equipment	$ 930,190	$ 917,229
Accumulated depreciation	(477,599)	(284,517)
Total	$ 452,591	$ 632,712

The Company has a useful life of 2-10 years for equipment. Depreciation was approximately $58,000 and $100,000 for the three months ended September 30, 2024 and 2023, respectively and $193,000 and $300,000 for the nine months ended September 30, 2024 and 2023, respectively.

6. INTANGIBLE ASSETS

Intangible assets consisted of the following at the periods presented:

	September 30, 2024	December 31, 2023
Domain name	$ 146,389	$ 146,389
Developed technology	6,995	6,995
IP patent	78,274	78,274
	231,658	231,658
Accumulated amortization	(147,086)	(135,050)
	84,572	96,608
Goodwill	88,932	-
Total	$ 173,504	$ 96,608

The Company has a useful life of 5-10 years for intangibles. Amortization was approximately $4,000 for the three months ended September 30, 2024 and 2023 and $12,000 for the nine months ended September 30, 2024 and 2023.

The Company's estimated future amortization of intangible assets is as follows:

Years Ending December 31,	Amount
2024 (3 months)	$ 4,013
2025	16,049
2026	16,049
2027	16,049
Thereafter	32,412
Total	$ 84,572

7. NOTES PAYABLE

The following table is a summary of the Company's outstanding debts as of the periods presented:

	September 30, 2024	December 31, 2023
Convertible notes	3,899,399	2,899,424
Aedifex Investment LLC	4,050,000	-
ACH Capital West, LLC	1,257,143	482,143
	9,206,542	3,381,567
Less: current portion	(1,257,143)	(482,143)
Total long-term	$ 7,949,399	$ 2,899,424

In 2021, the Company entered into Convertible Note Purchase Agreements (the 2021 Convertible Note Purchase Agreements") with multiple accredited investors, pursuant to which the Company agreed to sell a principal amount of $1,900,000 convertible promissory notes that will be convertible into shares of the Company's Series A-1 Preferred Stock. The Notes bear interest of 8% and are due and payable on demand. Each Note will be converted into Series A-1 Preferred Stock at a conversion price equal to $0.66883 at closing.

In 2023, the Company entered into Note Purchase Agreements (the "2023 Note Purchase Agreements") with multiple accredited investors, pursuant to which the Company agreed to sell a principal amount of $7,000,000 of convertible promissory notes. In September 2023, these notes and the interest due on them were converted to Series A-3 Preferred Stock.

In December 2023, the Company issued a note payable for the principal amount of $500,000 with ACH Capital West, LLC. The term was 7 months but in February 2024, the Company refinanced and received additional funding with the principal balance becoming $1,000,000. In July 2024, the Company refinanced the agreement to receive additional funding and adjust the principal balance to $1,600,000 with a due date of February 2025. In February 2025, the Company refinanced a principal balance of $865,000 with $1,124,500 due over 36 weeks.

On August 9th 2024, Adifex Holdings LLC (“Adifex”), Amaze Software, Inc. (“Amaze”), the stockholders of Amaze Software, Inc. and the Stockholder Representative entered into a Stock Purchase Agreement (the “SPA”) pursuant to which Adifex will acquire 100% of the issued and outstanding capital stock of Amaze via a share exchange transaction, merger transaction or other business combination structure with a public company, (the “Transaction”). At various times during the negotiation of the SPA, Adifex advanced working capital to Amaze. Section 7.8 of the SPA provides that Amaze acknowledges that Adifex provided a series of bridge loans with an aggregate value of $4 million and that in connection with the closing of the Transaction Adifex will forgive such bridge loans. On October 7, 2024 Adifex and Amaze signed a forgivable promissory note evidencing the bridge loans referenced in the SPA and additional funds to be advanced by Adifex after the signing of the SPA, which was subsequently amended on October 17th 2024.

Principal maturities of the Company's notes payable are as follows:

Years Ending December 31,		Amount
2024	$	1,120,000
2025		8,086,542
2026		-
2027		-
Total	$	9,206,542

8. STOCKHOLDERS' EQUITY

Series A Convertible Preferred Stock

On July 12, 2022, the Company entered into a Stock Purchase Agreement with ten accredited investors (the “Purchasers”) pursuant to which the Company agreed to issue and sell in a private placement (the “Offering”) shares of Series A-3 Preferred Stock. Pursuant to the Stock Purchase Agreement, the Purchasers collectively agreed to purchase up to 4,661,028 shares of Series A-3 Preferred Stock at a per share purchase price equal to $0.923652 for a total gross proceeds of $4,305,167.92 at the initial closing of the Offering (the “Initial Closing”), which occurred on July 12, 2022. The Stock Purchase Agreement was amended and restated on October 24, 2022, for the Company to issue and sell to six of the Purchasers and additional new accredited investor an additional 2,670,438 shares of Series A-3 Preferred Stock at a per share purchase price equal to $0.923652 for a total gross proceeds of $2,466,555.42 at a second closing, which occurred on October 24, 2022.

In September 2023, approximately $8.2 million in convertible debt was converted into 9,605,664 shares of Series A-3 Preferred Stock pursuant to their Convertible Promissory Notes from 2023.

9. EQUITY-BASED COMPENSATION

Stock Options

In 2023, the Company issued stock options to purchase 4,560,173 shares of its common stock to various employees of the Company. During the first nine months of 2024, the Company issued stock options to purchase 263,291 shares of common stock to various employees of the Company. Most options vest over a period of four years, with 25% vesting after one year and the remaining 75% vesting in equal monthly installments over the following 36

months and are exercisable for a period of ten years. Stock based compensation for stock options is estimated at the grant date based on the fair value calculated using the Black-Scholes method.

In April 2023, the Company issued stock options to purchase 200,000 shares of its common stock to an advisor of the Company. These options vested immediately and exercisable for a period of then years.

	Number of Options		Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (Years)
Outstanding at December 31, 2023	9,908,041	$	0.13	8.53
Granted	263,291		0.69	10.00
Exercised	(115,784)		-	-
Forfeited	(1,335,676)		-	-
Outstanding at September 30, 2024	8,719,872	$	0.13	7.78
Exercisable at September 30, 2024	6,607,623	$	0.12	7.68

10. INCOME TAXES

The Company has federal and state net operating loss carryforwards with a full valuation allowance against the deferred tax assets as of September 30, 2024. No income tax expense or benefit was recorded for the periods ended September 30, 2024 and December 31, 2023 due to the Company's net loss position.

11. CUSTOMER CONCENTRATION

For the three and nine months ended September 31, 2024 and December 31, 2023, no creator was responsible for more than 10% of the Company's gross sales.

12. COMMITMENT AND CONTINGENCIES

The Company accrues a liability and charges operations for the estimated costs of contingent liabilities, including adjudication or settlement of various asserted and unasserted claims existing as of the balance sheet date, where there is a reasonable possibility that a loss has been incurred and the loss (or range of probable loss) is estimable.

From time to time the Company may become subject to threatened and/or asserted claims arising in the ordinary course of our business. Other than the matter described below, management is not aware of any matters, either individually or in the aggregate, that are reasonably likely to have a material impact on the Company's financial condition, results of operations or liquidity.

Legal Proceedings

The Company is subject to legal disputes and claims that arise in the ordinary course of business. The Company has resolved all litigation filed against it in 2022 and 2023 except for the following matter:

G&I IX Aviation LLC v. Teespring, Inc. et al.

Amaze Holding Company LLC is a defendant in G&I IX Aviation LLC v. Teespring, Inc. et al., Case No. 23-CI-00220 in Boone County Circuit Court, Kentucky. When Amaze acquired certain assets of Teespring, Inc., pursuant to an Asset Purchase Agreement in November 2022, Teespring, Inc. leased commercial property located at 1201 Aviation Boulevard, Hebron, Kentucky, owned by Plaintiff G&I IX Aviation LLC ("G&I"). During and after APA negotiations, Amaze attempted to assume the lease, but Plaintiff refused to consent to the assignment of the lease unless Amaze paid previous obligations the landlord claimed Teespring. Inc. owed. Ultimately, G&I and Amaze never signed a consent to assignment of the lease. Plaintiff provided a notice of default on December 15, 2022, and filed its complaint against Teespring, Inc. and Amaze on February 1, 2023. On June 12, 2024, the court denied plaintiff's motion for summary judgment against Amaze. The matter remains in discovery.

13. SUBSEQUENT EVENTS

The following legal disputes arose subsequent to September 30, 2024:

MyLocker.com, L.L.C. v. Amaze Holding Company LLC

On September 23, 2024, MyLocker.com L.L.C. ("MyLocker") filed a complaint against Amaze Holding Company LLC, Case No. 24-013888, in Wayne County Circuit Court, Michigan. Amaze and MyLocker had entered into a Print Partner Services Level Agreement on June 12, 2023, under which MyLocker agreed to accept order fulfillment assignments from Amaze. MyLocker filed its September 23, 2024 complaint seeking payment of invoices issued to Amaze on August 8, 2024, August 22, 2024, September 6, 2024, and September 16, 2024. On November 11, 2024, the court entered a default judgment against Amaze in the amount of $81,772.24.

Secured Promissory Notes with Fresh Vine Wine, Inc

The Company and Fresh Vine Wine, Inc. ("Fresh Vine") entered into a promissory note (the "Fresh Vine Note") effective October 28, 2024, under which Fresh Vine agreed to lend to the Company the principal sum of up to $3.5 million. The Fresh Vine Note bears interest at 6.00% per annum until the closing date of the Business Combination (defined below). If the Business Combination does not close, the interest rate increases to 12% per annum from the date that negotiations cease. The unpaid principal plus accrued interest is due and payable on the date that is 9 months after the date on which Fresh Vine or the Company provides notice to the other that negotiations have ceased if the Business Combination is not closed. Provided there is no event of default, the Fresh Vine note will be forgiven on the date the Business Combination Agreement (detailed below) closes. The Fresh Vine Note is secured by all of the assets of Amaze Holding Company LLC.

Business Combination Agreement with Adifex

Fresh Vine and Adifex Holdings LLC, a Delaware limited liability company, or "Adifex", have entered into a Business Combination Agreement, dated November 3, 2024, under which Fresh Vine formed a direct, wholly owned subsidiary, Amaze Holdings Inc. ("Pubco"), which in turn formed two direct, wholly owned subsidiaries, VINE Merger Sub Inc. ("VINE Merger Sub") and Adifex Merger Sub LLC ("Adifex Merger Sub"). Upon satisfaction or waiver of the conditions to closing in the Business Combination Agreement, VINE Merger Sub will consummate the VINE Merger with and into Fresh Vine, with Fresh Vine surviving the merger as a direct, wholly owned subsidiary of Pubco, and Adifex Merger Sub will consummate the Adifex Merger with and into Adifex with Adifex surviving the merger as a direct, wholly owned subsidiary of Pubco. Upon consummation of the Business Combination, Fresh Vine and Adifex will each be a wholly owned subsidiary of Pubco and, as a result, Pubco will hold what today are Fresh Vine's and Adifex' independent businesses. Also, at the effective time of the VINE merger, (each outstanding warrant to purchase shares of Fresh Vine capital stock will be exchanged (or otherwise amended) for a warrant to purchase shares of Pubco common stock.

The Business Combination Agreement contains customary representations, warranties and covenants, including covenants obligating the Company, during the period prior to closing, to conduct its business and operations in the ordinary course of business and not to engage in certain specified activities without Fresh Vine's prior consent.

Consummation of the Business Combination is subject to the satisfaction or waiver of certain closing conditions, including without limitation, approval by the Fresh Vine's stockholders of the Business Combination Agreement, including the Business Combination, completion of the acquisition of Amaze by Adifex, and the Company having raised up to $10,000,000 through the sale of its equity or debt securities to cover transaction expenses and for working capital purposes.

The Business Combination Agreement may be terminated in certain limited circumstances including (i) by mutual written consent of Fresh Vine and Adifex; (ii) by either Fresh Vine or Adifex if the VINE Merger and the Adifex Merger have not have been consummated by April 30, 2025 (subject to extension) (iii) by either Fresh Vine or Adifex if a court of competent jurisdiction or governmental authority has issued a final and nonappealable order, or taken any other action, having the effect of permanently restraining, enjoining, or otherwise prohibiting any of the transactions contemplated by the Business Combination Agreement; (iv) by either Fresh Vine or Adifex upon a breach of any representation, warranty, covenant, or agreement in the Business Combination Agreement by the other party; or (v) by Fresh Vine, upon Fresh Vine's board of directors authorizing Fresh Vine to enter into a permitted alternative agreement in the manner set forth in the Business Combination Agreement.