

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): December 15, 2022

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

Nevada
(State or Other Jurisdiction
of Incorporation)

001-41147
(Commission File Number)

87-3905007
(I.R.S. Employer
Identification No.)

11500 Wayzata Blvd. #1147
Minnetonka, MN 55305
(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.

Effective December 15, 2022, Fresh Vine Wine, Inc. (the “Company”) entered into a Consulting Agreement with Tribe of Five, LLC (“Tribe of Five”) pursuant to which Tribe of Five has agreed to advise the Company with respect to its sales, marketing and distribution efforts, including assisting with managing our relationships with certain of its third party vendors, for an initial term of three years. As compensation, the Company agreed to issue 120,000 shares of its common stock to Tribe of Five as soon as practicable after entry into the Consulting Agreement, and has agreed to issue an additional 180,000 shares of common stock to Tribe of Five upon the Company recognizing an aggregate of \$10 million in total revenue during the first two years of the term of the Consulting Agreement. The shares issued and issuable to Tribe of Five under the Consulting Agreement comprise a portion of the 2,000,000 shares issued or issuable to six service providing vendors of the Company (the “Vendors”) described in Item 3.02 of this Current Report on Form 8-K.

On December 15, 2022, and in conjunction with the initial issuance of 970,000 shares of the Company’s common stock to the Vendors, Rick Nechio and Damian Novak, who are officers, directors and two of the Company’s founders, entered into Agreements to Forfeit Shares of Common Stock (the “Forfeiture Agreements”) pursuant to which Messrs. Nechio and Novak agreed to forfeit and transfer back to the Company without consideration 368,000 and 602,000 shares, respectively, of common stock of the Company held by them (a total of 970,000 shares), to enable the Company to preserve cash by issuing such number of shares to the Vendors without subjecting the Company’s other stockholders to dilution therefrom. The share forfeitures were effected on December 19, 2022.

The foregoing summaries of the Consulting Agreement with Tribe of Five and the Forfeiture Agreements with Messrs. Nechio and Novak are qualified in all respects by the agreements themselves, copies of which are attached as Exhibits 10.1, 10.2 and 10.3 to this Current Report on Form 8-K and incorporated by reference herein.

Item 3.02 Unregistered Sales of Equity Securities.

Between December 15 and December 18, 2022, the Company entered into agreements with the Vendors pursuant to which the Company agreed to issue a total of 970,000 shares of its common stock to the Vendors as soon as practicable after the dates of the agreements. Pursuant to the agreements with certain of the Vendors, the Company has agreed to issue up to an additional 1,030,000 shares of common stock upon the Company achieving specified revenue-related performance objectives within identified timeframes. Such issuances and contingent future issuances were made in reliance upon the exemption from registration provided by Section 4(a)(2) under the Securities Act of 1933, as amended, based on the Company’s reasonable belief that the offer and sale of the warrant has not and will not involve a public offering.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit No.	Description
10.1	Consulting Agreement dated effective December 15, 2022 by and between Fresh Vine Wine, Inc. and Tribe of Five, LLC
10.2	Agreement to Forfeit Shares of Common Stock dated December 15, 2022 by and between Fresh Vine Wine, Inc. and Rick Nechio
10.3	Agreement to Forfeit Shares of Common Stock dated December 15, 2022 by and between Fresh Vine Wine, Inc. and Damian Novak
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: December 20, 2022

By: /s/ Rick Nechio
Rick Nechio
Interim Chief Executive Officer

EXHIBIT INDEX

Exhibit No.	Description
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10.3	<u>Agreement to Forfeit Shares of Common Stock dated December 15, 2022 by and between Fresh Vine Wine, Inc. and Damian Novak</u>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

CONSULTING AGREEMENT

THIS CONSULTING AGREEMENT ("Agreement") is made effective as of December 15, 2022 by and between Fresh Vine Wine, Inc., a Nevada corporation with its principal address at 11500 Wayzata Blvd. #1147, Minnetonka, MN 55305 (the "Company"), and Tribe of Five, LLC, with its principal address at 11900 West Olympic Blvd., Suite 450, Los Angeles, CA 90064 ("Consultant").

BACKGROUND

The Company desires to retain Consultant to provide services to the Company as described herein and Consultant wishes to perform such services hereunder.

1. **APPOINTMENT AND NATURE OF DUTIES.** The Company, subject to the provisions herein, hereby appoints Consultant to provide advice and counsel with regard to matters identified in a mutually agreed upon Statement of Work ("SOW") that is attached to, or otherwise specifically references, this Agreement, and Consultant accepts such appointment ("Services"). Such Services will be under the direction of and at the request of the Company, and as mutually agreed between the parties.

2. **SCOPE OF RELATIONSHIP.** Consultant is hereby engaged for all purposes as an independent contractor and not as an employee of the Company. Consultant will be responsible for all employer-related obligations, including federal and state taxes relating to this Agreement. Nothing in this Agreement shall be construed to create a partnership, joint venture, license or agency relationship. Consultant represents that work performed pursuant to this Agreement will not violate any agreements or obligations he may have to any third party and that proprietary information of any third party will not be used in the course of rendering services to the Company nor will any such information be disclosed to the Company.

3. COMPENSATION OF CONSULTANT

- a. Subject to the provisions hereof, the Company will pay Consultant, in full compensation for Consultant's Services hereunder performed, for Services performed and authorized by the Company pursuant to and as defined in the SOW, which may be amended from time to time by written mutual consent.
- b. The Company will reimburse Consultant for pre-approved, out-of-pocket project-related expenses incurred at the request of the Company upon the presentation by Consultant of an itemized accounting of such expenditures in a form and manner requested by the Company.
- c. Expenses payable under this Agreement will be paid to the Consultant within fifteen days following the receipt of Consultant's invoice detailing such expenses. The Company will report to appropriate governmental agencies all appropriate payments made hereunder, as required, with regard to payments made to an independent contractor.

4. **TERM AND TERMINATION.** This Agreement will become effective on the date first written above and, unless extended by written mutual consent, will remain in effect until the later of (a) three years from the date first written above and (b) such later date as may be set forth in a SOW. Either party may terminate this Agreement or any SOW upon 30 days' prior written notice to the other party. Upon termination or expiration of this Agreement, the Company will have no further liability to the Consultant except as to any amounts which will become due to Consultant pursuant to Section 3 of this Agreement for Services performed by Consultant prior to the termination of this Agreement. Consultant agrees to immediately return to the Company all the Company information and documents in his or her possession or the possession of any affiliates or agents, including all information and documentation generated during the term of the agreement regarding the Company and/or its product(s). Consultant's obligations under Sections 5, 6, and 7 shall survive the expiration or termination of this Agreement.

5. **CONFIDENTIALITY.** During the course of Consultant's engagement with the Company, Consultant may acquire certain Confidential Information (as defined below). During the period of such engagement and for five (5) years thereafter, Consultant will not disclose Confidential Information to any third party except as approved in writing by the President of the Company. Confidential Information acquired by Consultant will be utilized by Consultant solely for purposes consistent with Consultant's services for the Company. Following the termination or expiration of Consultant's engagement with the Company, Consultant may not use all or any portion of the Confidential Information that Consultant may acquire for any purpose without the express written consent of the Company's Chief Executive Officer. No copies will be made or retained in any form by Consultant of any written or recorded Confidential Information, and at the conclusion of Consultant's engagement with the Company, or upon demand by the Company, the Consultant will return Confidential Information to the Company and not thereafter use any such Confidential Information.

For the purposes of this Agreement, the term “Confidential Information” means all actual or prospective customer, or licensee lists, trade secrets, processes, inventions, improvements, manufacturing or systems techniques, formulas, development or experimental work, prototype, work in process, strategies, financial information, clinical data, and any other secret or confidential matter relating or pertaining to the products, services, sales or other business of the Company, any affiliate of the Company, or any entities with which the Company has contracts or other business or investment relationships. Confidential Information shall not, however, include information that (a) was known by Consultant prior to receipt hereunder or was subsequently received from another source at no fault of Consultant, or (b) was, at the time of receipt, or is subsequently, generally available to the public without fault of Consultant (in the event of such subsequent availability without fault, such information will cease being Confidential Information at the time generally available).

Consultant acknowledges and agrees that Consultant is aware (and that its officers, directors, employees and other representatives (the “Representatives”)) are aware or, upon receipt of any Confidential Information, will be advised by Consultant) that (i) the Confidential Information being furnished to Consultant or its Representatives contains material, non-public information regarding the Company and (ii) the United States securities laws prohibit any persons who have material, nonpublic information regarding a company from purchasing or selling securities of such company or from communicating such information to any person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell such securities in reliance upon such information.

6. INVENTIONS. Consultant agrees that all inventions that Consultant, either alone or jointly with others which Consultant makes, discovers, conceives, reduces to practice or develops (in whole or in part, either alone or jointly with others) as a direct consequence of, or otherwise solely relating to, Consultant’s duties under this Agreement shall be the sole property of the Company to the maximum extent permitted by law. If in the course of Consultant’s duties hereunder, Consultant incorporates into a the Company product, process or machine any intellectual property owned by Consultant or in which Consultant has an interest, the Company is hereby granted and shall have a nonexclusive, royalty-free, irrevocable, perpetual, sublicensable, worldwide license to make, have made, modify, use, market, sell and distribute such intellectual property as part of or in connection with such product, process or machine. All writings, books, articles, computer programs, inventions, discoveries and all other materials of any nature whatsoever that is subject to copyright or patent and could be reduced to any tangible form of expression, in whole or in part, by Consultant in the course of Consultant’s engagement with the Company shall be the property of the Company and shall be deemed to be a “work made for hire” as that term is used in the United States Copyright Law, 17 U.S.C. Sec. 101. Consultant agrees to perform, during and after the term of this Agreement, all acts deemed necessary or desirable by the Company to permit and assist it, at the Company’s expense, in further evidencing and perfecting the assignments made to the Company under this Section and in obtaining, maintaining, defending and enforcing patents, patent rights, copyrights, trademark rights, trade secret rights or any other rights in connection therewith.

7. MISCELLANEOUS

- a. Indemnification. Consultant agrees to indemnify, defend and hold harmless the Company and the Company’s directors, managers, members, officers, employees, agents, and representatives (the “Indemnified Parties”) from and against any and all claims, damages, liabilities, fines, penalties, costs and expenses (including reasonable attorney’s fee) to which such Indemnified Parties may be subjected as a result of Consultant’s (i) breach of this Agreement or (ii) Consultant’s performance hereunder in a manner that is negligent, grossly negligent, reckless or willfully improper.

- b. Governing Law. This Agreement will be governed by, and construed in accordance with, the laws of the State of Minnesota, without giving effect to its principles governing conflicts of laws.
- c. Entire Agreement. This Agreement embodies the entire agreement between the parties with regard to Consultant's consulting services for the Company and there have been and are no agreements, representations or understandings between the parties other than those set forth herein. This Agreement may not be amended or modified, except by an instrument in writing executed by the parties hereto. Any waiver of any breach of this Agreement will be limited to the particular instance and will not operate or be deemed to waive any future breach nor will any delay on the part of either party to act upon any breach be deemed a waiver thereof.
- d. Assignment. This Agreement and Consultant's rights and obligations shall not be assignable, in whole or in part, by Consultant without the prior written consent of the Company. If Consultant is doing business as a partnership or corporation, any change in ownership is an "Assignment" under this provision. Any assignment without the Company consent is void.
- e. Notice. Either party may provide notice to the other party through registered United States mail directed to the other party at the address first written above, or any future address of either party. Notice of any change of address will be sent by mail or facsimile to the non-changing party at its then present address. In the event that either party refuses to accept delivery of any notice mailed in accordance with this paragraph, then that party will be deemed to have received such notice. Such notice will be deemed to be received three days after it is sent.
- f. Severability. If any of the provisions of this Agreement will be invalid or unenforceable, such invalidity or unenforceability will not invalidate or render unenforceable the entire agreement, but rather the entire agreement will be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the Company and Consultant will be construed and enforced accordingly.
- g. Injunctive Relief. Each party acknowledges and agrees that in the event of any breach hereof the non-breaching party will be authorized and entitled to obtain from a court of competent jurisdiction preliminary permanent injunctive relief and an equitable accounting of all profits or benefits arising out of any violation hereof, which rights and remedies will be cumulative and in addition to any other rights and remedies to which the non-breaching party may be entitled by law or in equity.
- h. Counterparts. This Agreement may be executed in one or more counterparts and by facsimile or other means of electronically imaging a signature, each of which shall constitute an original and all of which together shall constitute one and the same instrument.

The parties hereto have executed this Agreement as of the day and year first above written.

FRESH VINE WINE, INC.

By: /s/ James Spellmire
Name: James Spellmire
Title: Chief Financial Officer

TRIBE OF FIVE, LLC

By: /s/ Trent Broin
Name: Trent Broin
Title: Consultant

Exhibit A – Statement of Work (“SOW”)

1. Scope and Purpose.

Consultant will advise the Company with respect to its sales, marketing and distribution efforts, including assisting with managing the Company’s relationships with Light Switch Digital, which serves as the Company’s advertising agency, and PKGD Group, which provides sales and distribution management services to the Company.

2. Compensation.

Subject to the approval of the Board of Directors of the Company, the Company agrees to issue to Consultant (a) 120,000 shares of common stock of the Company as soon as practicable after the date of this Agreement, (b) 180,000 shares of common stock of the Company if, and only if, the Company recognizes an aggregate of \$10 million in total revenue during the period beginning on the date of this Agreement and ending on the two year anniversary of the date of this Agreement of common stock of the Company. For purposes of this Agreement, the Company’s total revenue will be determined in accordance with United States generally accepted accounting principles as reported in the Company’s financial statements filed with the Securities and Exchange Commission. The Company will issue the shares of common stock, if any, to Consultant under (b) and (c) above, respectively, as soon as reasonably practicable after the Company determines that the applicable revenue milestone has been achieved.

The shares of common stock issued by the Company to Consultant will be unregistered shares of common stock issued pursuant to an exemption from the registration requirements of Section 5 of the Securities Act of 1933, as amended (the “Securities Act”), contained in Section 4(a)(2) thereof and/or Regulation D thereunder. The shares of common stock may only be disposed of in compliance with state and federal securities laws. In connection with any transfer of the shares of common stock other than pursuant to an effective registration statement or Rule 144 under the Securities Act, the Company may require Consultant to provide to the Company an opinion of counsel selected by the transferor and reasonably acceptable to the Company, the form and substance of which opinion shall be reasonably satisfactory to the Company, to the effect that such transfer does not require registration of such transferred shares of common stock under the Securities Act.

3. Investment Representations. In connection with the Company’s issuance of shares of its common stock (the “Shares”) to Consultant pursuant to Section 2 of this Exhibit A, Consultant represents and warrants to the Company as follows:

(a) Investment Intent. Consultant is acquiring the Shares as principal for its own account and not with a view to, or for dis-tributing or reselling such Shares or any part thereof in violation of the federal securities laws or any applicable state securities laws. Consultant does not presently have any agreement, plan or understanding, directly or indirectly, with any person or entity to distribute or effect any distribution of any of the Shares to or through any person or entity. Consultant understands that, as “restricted securities,” the Shares will bear customary and appropriate restricted stock legend(s) or notations.

(b) Accredited Investor. At the time Consultant was offered the Shares, it was, and at the date hereof it is, an “accredited investor” as defined in Rule 501(a) under Securities Act of 1933, as amended (the “Securities Act”). Consultant was not organized for the specific purpose of acquiring the Shares.

(c) No General Solicitation. Consultant is not purchasing the Shares as a result of any advertisement, article, notice or other communication regarding the Shares published in any newspaper, magazine or similar media or broadcast over television or radio or presented at any seminar or any other general advertisement.

(d) Experience. Consultant, either alone or together with its representatives, has such knowledge, sophistication and experience in business and financial matters so as to be capable of evaluating the merits and risks of the prospective investment in the Shares, and has so evaluated the merits and risks of such investment. Consultant is able to bear the economic risk of an investment in the Shares and, at the present time, is able to afford a complete loss of such investment.

(e) Access to Information. Consultant has received or has access to information about the Company that it considers sufficient to make an informed investment decision regarding the Shares.

4. SOW Term and Termination. This SOW is effective as of the date last signed below by the Company and Consultant and will terminate on the date that is three years after the date of this SOW unless amended from time to time by written mutual consent. Either party may terminate this SOW upon 30 days’ prior written notice to the other party.

The parties hereto have executed this SOW as of the date of the Agreement.

FRESH VINE WINE, INC.

By: /s/ James Spellmire
Name: James Spellmire
Title: Chief Financial Officer

TRIBE OF FIVE, LLC

By: /s/ Trent Broin
Name: Trent Broin
Title: Consultant

AGREEMENT TO FORFEIT SHARES OF COMMON STOCK

Rick Nechio
11500 Wayzata Blvd. #1147
Minnetonka, MN 55305

December 15, 2022

Dear Mr. Nechio:

The purpose of this agreement (this “**Agreement**”) is to confirm our discussions and agreement that Rick Nechio (the “**Stockholder**”) has agreed to forfeit to Fresh Vine Wine, Inc., a Nevada corporation (the “**Company**”), 602,000 shares of common stock, par value \$0.001 per share (“**Common Stock**”), of the Company, subject to the terms and conditions set forth in this Agreement.

The Company is party to a Scope of Work with Light Switch Digital (“**LSD**”), dated October 1, 2022, as amended (the “**LSD Agreement**”), pursuant to which the Company has agreed to issue 500,000 shares of Common Stock to LSD as soon as reasonably practicable after the date hereof as consideration for the services provided by LSD under the LSD Agreement.

The Company is party to a Sales and Distribution Management Agreement with Performance Institute, LLC d/b/a PKGD Group (“**PKGD**”), dated October 15, 2022, as amended (the “**PKGD Agreement**”), pursuant to which the Company has agreed to issue 100,000 shares of Common Stock to PKGD as soon as reasonably practicable after the date hereof as consideration for the services provided by PKGD under the PKGD Agreement.

The Company is party to a Consulting Agreement with Tribe of Five, LLC (“**Tribe of Five**”), dated on or around the date of this Agreement (the “**Tribe of Five Agreement**”), pursuant to which the Company has agreed to issue 120,000 shares of Common Stock to Tribe of Five as soon as reasonably practicable after the date hereof for the services provided by Tribe of Five under the Tribe of Five Agreement.

The Company is party to a Consulting Agreement with BLVD Network, LLC (“**BLVD**”), dated on or around the date of this Agreement (the “**BLVD Agreement**”), pursuant to which the Company has agreed to issue 150,000 shares of Common Stock to BLVD as soon as reasonably practicable after the date hereof for the services provided by BLVD under the BLVD Agreement.

The Company has agreed with Jonesworks LLC (“**Jonesworks**”) (the “**Joneswork Agreement**”) to issue 50,000 shares of Common Stock to Jonesworks as soon as reasonably practicable after the date hereof for the services provided by Jonesworks to the Company under the Agreement dated October 15, 2021, as amended.

The Company is party to a Consulting Agreement with L&L Advisory Services, LLC (“**L&L**”), dated on or around the date of this Agreement (the “**L&L Agreement**”), pursuant to which the Company has agreed to issue 50,000 shares of Common Stock to L&L as soon as reasonably practicable after the date hereof for the services provided by L&L under the L&L Agreement.

In order to prevent dilution to the Company’s stockholders in connection with the Company’s issuance of shares of Common Stock to LSD, PKGD, Tribe of Five, BLVD, Jonesworks and L&L, respectively, the Stockholder hereby forfeits to the Company, for no consideration, 602,000 shares of Common Stock of the Company.

The Stockholder hereby irrevocably appoints the Chief Financial Officer or Secretary of the Company, with full power of substitution, to transfer the shares of Common Stock set forth above on the books and records of the Company in accordance with the terms of this Agreement.

The Company and the Stockholder acknowledge that the shares of Common Stock to be forfeited by the Stockholder under this Agreement represent 60% of the total shares of Common Stock to be issued by the Company to LSD, PKGD, Tribe of Five, BLVD and Jonesworks, respectively, and 100% of the shares of Common Stock to be issued by the Company to L&L, and that the Company is entering into an agreement with Damian Novak providing for the forfeiture by Damian Novak of the remaining 40% of the total shares of Common Stock to be issued by the Company to LSD, PKGD, Tribe of Five, BLVD and Jonesworks, respectively, on the same terms and conditions as set forth in this Agreement. While certain of the LSD Agreement, PKGD Agreement, Tribe of Five Agreement, BLVD Agreement, Jonesworks Agreement and L&L Agreement may provide for additional shares of Common Stock to be issued upon the achievement of certain milestones, the Stockholder is not agreeing to forfeit any shares of Common Stock in connection with such additional issuances and any additional forfeiture by the Stockholder will be subject to the written approval of the Stockholder, which may be withheld in its sole discretion.

All expenses, including attorneys’ fees and expenses, incurred by the Stockholder in connection with the forfeitures contemplated herein shall be borne by the Company. In addition, the Company agrees to hold the Stockholder and its members, managers, officers and agents (each an “**Indemnified Party**”) harmless from and indemnify any Indemnified Party against all liabilities, losses, damages, judgments, costs and expenses of any kind which may be imposed on, incurred by or asserted against such Indemnified Party relating to or arising out of the forfeitures contemplated herein.

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 law. This Agreement may be executed and delivered by electronic signature and 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.

[Signature page follows]

IN WITNESS WHEREOF, the parties have executed this Agreement to Forfeit Shares of Common Stock effective as of the date first set forth above.

FRESH VINE WINE, INC.

By: /s/ James Spellmire
Name: James Spellmire
Title: Chief Financial Officer

STOCKHOLDER:

/s/ Rick Nechio
Rick Nechio

AGREEMENT TO FORFEIT SHARES OF COMMON STOCK

Damian Novak
10440 N. Central Expressway
Suite 1400
Dallas, Texas 75231

December 15, 2022

Dear Mr. Novak:

The purpose of this agreement (this “**Agreement**”) is to confirm our discussions and agreement that Damian Novak (the “**Stockholder**”) has agreed to forfeit to Fresh Vine Wine, Inc., a Nevada corporation (the “**Company**”), 368,000 shares of common stock, par value \$0.001 per share (“**Common Stock**”), of the Company, subject to the terms and conditions set forth in this Agreement.

The Company is party to a Scope of Work with Light Switch Digital (“**LSD**”), dated October 1, 2022, as amended (the “**LSD Agreement**”), pursuant to which the Company has agreed to issue 500,000 shares of Common Stock to LSD as soon as reasonably practicable after the date hereof as consideration for the services provided by LSD under the LSD Agreement.

The Company is party to a Sales and Distribution Management Agreement with Performance Institute, LLC d/b/a PKGD Group (“**PKGD**”), dated October 15, 2022, as amended (the “**PKGD Agreement**”), pursuant to which the Company has agreed to issue 100,000 shares of Common Stock to PKGD as soon as reasonably practicable after the date hereof as consideration for the services provided by PKGD under the PKGD Agreement.

The Company is party to a Consulting Agreement with Tribe of Five, LLC (“**Tribe of Five**”), dated on or around the date of this Agreement (the “**Tribe of Five Agreement**”), pursuant to which the Company has agreed to issue 120,000 shares of Common Stock to Tribe of Five as soon as reasonably practicable after the date hereof for the services provided by Tribe of Five under the Tribe of Five Agreement.

The Company is party to a Consulting Agreement with BLVD Network, LLC (“**BLVD**”), dated on or around the date of this Agreement (the “**BLVD Agreement**”), pursuant to which the Company has agreed to issue 150,000 shares of Common Stock to BLVD as soon as reasonably practicable after the date hereof for the services provided by BLVD under the BLVD Agreement.

The Company has agreed with Jonesworks LLC (“**Joneswork**”) (the “**Joneswork Agreement**”) to issue 50,000 shares of Common Stock to Joneswork as soon as reasonably practicable after the date hereof for the services provided by Joneswork to the Company under the Agreement dated October 15, 2021, as amended.

In order to prevent dilution to the Company’s stockholders in connection with the Company’s issuance of shares of Common Stock to LSD, PKGD, Tribe of Five, BLVD and Jonesworks, respectively, the Stockholder hereby forfeits to the Company, for no consideration, 368,000 shares of Common Stock of the Company.

The Stockholder hereby irrevocably appoints the Chief Financial Officer or Secretary of the Company, with full power of substitution, to transfer the shares of Common Stock set forth above on the books and records of the Company in accordance with the terms of this Agreement.

The Company and the Stockholder acknowledge that the shares of Common Stock to be forfeited by the Stockholder under this Agreement represent 40% of the total shares of Common Stock to be issued by the Company to LSD, PKGD, Tribe of Five, BLVD and Jonesworks, respectively, and that the Company is entering into an agreement with Rich Nechio providing for, among other things, the forfeiture by Mr. Nechio of the remaining 60% of the total shares of Common Stock to be issued by the Company to LSD, PKGD, Tribe of Five, BLVD and Jonesworks, on the same terms and conditions as set forth in this Agreement. While certain of the LSD Agreement, PKGD Agreement, Tribe of Five Agreement, BLVD Agreement and Jonesworks Agreement may provide for additional shares of Common Stock to be issued upon the achievement of certain milestones, the Stockholder is not agreeing to forfeit any shares of Common Stock in connection with such additional issuances and any additional forfeiture by the Stockholder will be subject to the written approval of the Stockholder, which may be withheld in its sole discretion.

All expenses, including attorneys’ fees and expenses, incurred by the Stockholder in connection with the forfeitures contemplated herein shall be borne by the Company. In addition, the Company agrees to hold the Stockholder and its members, managers, officers and agents (each an “**Indemnified Party**”) harmless from and indemnify any Indemnified Party against all liabilities, losses, damages, judgments, costs and expenses of any kind which may be imposed on, incurred by or asserted against such Indemnified Party relating to or arising out of the forfeitures contemplated herein.

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 law. This Agreement may be executed and delivered by electronic signature and 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.

[Signature page follows]

IN WITNESS WHEREOF, the parties have executed this Agreement to Forfeit Shares of Common Stock effective as of the date first set forth above.

FRESH VINE WINE, INC.

By: /s/ James Spellmire
Name: James Spellmire
Title: Chief Financial Officer

STOCKHOLDER:

/s/ Damian Novak
Damian Novak
