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

FORM 1-U

Current Report Pursuant to Regulation A

**Date of Report: March 28, 2019**  
(Date of earliest event reported)

**HIGHTIMES HOLDING CORP.**  
(Exact name of issuer as specified in its charter)

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**Delaware**

(State or other jurisdiction of  
incorporation or organization)

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**81-4706993**

(I.R.S. Employer  
Identification No.)

**10990 Wilshire Blvd**  
**Penthouse**  
**Los Angeles, California 90024-3898**  
(Full mailing address of principal executive offices)

**(844) 933-3287**  
(Issuer's telephone number, including area code)

Title of each class of securities issued pursuant to Regulation A: Class A voting Common Stock, par value \$0.0001 per share

This Current Report on Form 1-U is issued in accordance with Rule 257(b)(4) of Regulation A, and is neither an offer to sell any securities, nor a solicitation of an offer to buy, nor shall there be any sale of any such securities in any state or jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state or jurisdiction.

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## ITEM 9. OTHER EVENTS

### Appointment of Kraig A. Fox to position of CEO and President

On March 28, 2019, at a special joint meeting of the majority stockholders and members of the board of directors (the “Board”) of Hightimes Holding Corp. (the “Company”), Kraig G. Fox was appointed to the position of Chief Executive Officer and President of the Company and elected as a member of the Board. At the same meeting, Adam E. Levin resigned from the positions of President and Chief Executive Officer and was elected to the position of Executive Chairman of the Company, a position that was newly created in conjunction with the Board’s adoption of amended and restated bylaws, which were duly adopted on the same day.

Mr. Fox has more than 20 years’ experience as an investor and operator in the media and entertainment industries. From January 2016 through March 2019, Mr. Fox was a senior managing director at Elridge Industries, a private investment firm headquartered in Greenwich, Connecticut. From June 2012 through December 2015, Mr. Fox was a senior managing director of Guggenheim Partners where he focused on Guggenheim’s overall strategy in the media and entertainment spaces, as well as the management of its media and entertainment investments. Prior to joining Guggenheim, Mr. Fox was a founder and Chief Operating Officer of Core Media (previously CKX, Inc.) where he oversaw all operations of the publicly traded company, including Core Media’s interests in the estate of Elvis Presley and the intellectual property rights of Muhammad Ali, as well as oversight of its wholly owned subsidiary, 19 Entertainment, which included shows such as *American Idol* (including television, recordings, live tours, artist management and sponsorships) and *So You Think You Can Dance*.

In conjunction with the appointment of Mr. Fox to the position of Chief Executive Officer and President, the Company entered into an employment agreement (the “Employment Agreement”) with Mr. Fox, dated as of March 15, 2019 (the “Effective Date”). Pursuant to the terms of the Employment Agreement, Mr. Fox will receive a base salary of \$460,000 per year (the “Base Compensation”), payable in equal monthly installments, provided that the Base Salary shall initially be fixed at \$1.00 and the remainder of the Base Salary shall accrue until such time as the Company shall have raised an additional \$10,000,000 following the Effective Date. In addition to the Base Compensation, Mr. Fox shall be entitled to (i) an annual bonus of up to \$250,000 depending on the Company’s achievement of certain performance goals, (ii) an option to purchase 650,000 shares of the Company’s common stock at an exercise price of \$11.00 per share, which stock options shall be issued under the Company’s 2019 Equity Incentive Plan, with one-third of such options shares vesting on March 15, 2020 and the balance of such option shares in equal monthly increments over the remaining two year period, and (iii) the right to participate in other equity grants or incentive bonus plans, as may be determined by the Board. In addition, Mr. Fox received a restricted stock unit award with respect to 500,000 shares of the Company’s common stock (to be adjusted from time to time to take into account any stock dividends, forward stock splits and reverse stock splits) which shall vest over the initial three-year term of the Employment Agreement, as follows: the right to purchase 33.333% of such shares of Common Stock shall vest on March 15, 2020, 33.333% of such shares of Common Stock shall vest on March 15, 2021, and 33.334% of such shares of Common Stock shall vest on March 15, 2022. The Employment Agreement has an initial term of 36 months and will thereafter be renewable in successive two-year terms, subject to the mutual agreement of the parties.

A copy of the Employment Agreement is filed as Exhibit 6.2 to this Current Report on Form 1-U and any summary of the terms of such agreement is subject to and qualified in their entirety by the full text of such document, which is incorporated by reference herein. A copy of the press release announcing Mr. Fox’s appointment is attached as Exhibit 15.1 to this Current Report on Form 1-U.

### Adoption of Amended and Restated Bylaws

As discussed above, the Board amended and restated the Company’s bylaws (the “Amended and Restated Bylaws”) so as to add in the position and duties of Executive Chairman of the Board, the position now held by our former Chief Executive Officer and President, Adam E. Levin. Under our bylaws, the Executive Chairman of the Board is responsible for presiding at all stockholders meetings, presiding at all Board meetings, and being a member of the executive committee of the Board, should the Board establish an executive committee. A copy of the Company’s Amended and Restated Bylaws is filed as [Exhibit 6.2](#) to this Current Report on Form 1-U and any summary of its terms are subject to and qualified in their entirety by reference to the full text of such document, which is incorporated by reference herein.

### Adoption of 2019 Equity Incentive Plan

On March 28, 2019, the Board amended and restated its 2017 Stock Incentive Plan, pursuant to a 2019 Equity Incentive Plan (the “2019 Equity Incentive Plan”), so as to (i) authorize the issuance of restricted stock units and (ii) increase the maximum number of shares available for issuance from 2,500,000 to 6,000,000 shares of common stock. A copy of the 2019 Equity Incentive Plan is filed as [Exhibit 6.3](#) to this Current Report on Form 1-U and any summary of its terms are subject to and qualified in their entirety by reference to the full text of such document, which is incorporated by reference herein.

**SIGNATURES**

Pursuant to the requirements of Regulation A, the issuer has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

**Hightimes Holding Corp.**  
a Delaware corporation

By: /s/ Adam E. Levin  
Name: Adam E. Levin  
Its: Executive Chairman  
Date: April 3, 2019

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**Exhibits to Form 1-U**

**Index to Exhibits**

**Exhibit No.**   **Description**

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6.1	<a href="#">Employment Agreement, dated as of March 15, 2019, between Hightimes Holding Corp. and Kraig G. Fox.</a>
6.2	<a href="#">Amended and Restated Bylaws.</a>
6.3	<a href="#">2019 Equity Incentive Plan.</a>
15.1	<a href="#">Press Release dated April 3, 2019</a>

## EMPLOYMENT AGREEMENT

AGREEMENT, dated as of March 15, 2019 (the “**Effective Date**”), is entered into by and between **HIGHTIMES HOLDING CORP.**, a Delaware corporation, (the “**Company**”), and **KRAIG G. FOX** (the “**Executive**”).

WHEREAS, the Company desires to avail itself of the services of the Executive for the period provided in this Agreement; and

WHEREAS, the Executive is willing to serve in the employ of the Company for such period upon the terms and conditions hereinafter provided;

NOW, THEREFORE, in consideration of Executive’s present and future performance of services for the Company and in consideration of the mutual promises and agreements hereinafter set forth, the Company and the Executive agree as follows:

1. **Employment and Duties.** The Company shall employ the Executive, and the Executive shall be employed by the Company as the Chief Executive Officer and President of the Company and Chief Executive Officer and President of each of its direct and indirect subsidiaries for the Employment Term (as defined below). The Executive shall report to Adam E. Levin the Executive Chairman of the Board of Directors and to the Board of Directors of the Company. The Executive shall perform his duties at the Company’s headquarters in New York, New York (or such other location as the Executive and Company may agree). In this capacity, the Executive shall perform such services, consistent with his office and the title of Chief Executive Officer and/or President, as from time to time shall be reasonably assigned to him by the Board of Directors of the Company, devoting such time and effort as necessary to manage, operate and direct the activities of the Company and perform all of the functions of the offices held by him; provided however that the Executive may also engage in other business investments and activities (subject to Section 6(b) below) consistent with his prior practices while employed by the Company so long as such activities do not materially and adversely affect the performance by the Executive of his duties and responsibilities hereunder. In addition, the Executive shall be nominated and elected to serve on the Board of Directors of the Company and each of the Company’s direct and indirect subsidiaries.

2. **Term.** The term of the Executive’s employment hereunder shall begin on the Effective Date and shall continue through the last day of the month which shall be the thirty sixth (36<sup>th</sup>) consecutive month following the Effective Date (the “**Initial Term**”). The term of employment may be extended beyond the Initial Term for successive two-year periods (each, an “**Additional Term**”) if the Company and the Executive mutually agree to extend the Initial Term for an Additional Term at any time prior the expiration of the Initial Term (the Initial Term and any mutual agreed upon Additional Term are hereinafter collectively referred to as the “**Employment Term**”).

3. **Compensation and Benefits.**

(a) **Base Salary.** During each twelve (12) consecutive months of the Employment Term, the Company shall pay the Executive a base salary at a rate of not less than Four Hundred and Sixty Thousand Dollars (\$460,000) (the “**Base Salary**”) payable in substantially equal monthly installments. Notwithstanding the foregoing, until such time as the Company shall, following the Effective Date, raise a minimum of \$10,000,000 of capital from the sale of debt or equity securities (the “**Additional Capital**”), the Executive’s Base Salary shall be fixed One (\$1.00) Dollar and the difference between \$460,000 and \$1.00 shall accrue and shall be payable to the Executive immediately following the Company’s receipt of such Additional Capital. Not less frequently than on each December 31<sup>st</sup> during the Employment Term, Executive will be eligible for periodic increases in Base Salary under the Company’s normal policies and procedures for executive salary increases which currently provide for annual reviews of executive salaries. Executive’s Base Salary for any year may not be reduced below the Executive’s Base Salary for the prior year without the consent of both Executive and the Company.

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(b) Annual Bonus. Not later than 90 days after the end of each calendar year of the Employment Term, commencing with the year ending December 31, 2019 (each a “**Measuring Year**”), in the event that the Company and its direct and indirect subsidiaries (collective the “**Hightimes Group**”) shall have achieved the budgeted goals for the Company established from time to time by the board of directors for such Measuring Year during the Employment Term (the “**Performance Goals**”), the Company shall pay to the Executive an annual bonus of \$250,000 in respect of the Company achieving the Performance Goals in such Measuring Year.

(c) Equity Compensation.

(i) Initial Grants. As of the close of business on the date of the Executive’s first day of employment with the Company, the Company’s Compensation Committee shall grant Executive a non-statutory stock option (the “**Initial Option**”) to purchase 650,000 shares of the Company’s common stock as defined in the Plan referenced in the immediately following sentence (the “**Common Stock**”) at an exercise price of \$11.00 per share. Executive’s right to purchase shares of Common Stock under the Initial Option shall vest over the initial three years, as follows: the right to purchase 33.333% of such shares of Common Stock shall vest on the first anniversary of the Effective Date and the balance shall vest in 24 equal monthly installments thereafter. The Initial Option will be granted pursuant to the Company’s 2019 Equity Incentive Plan (the “**Plan**”) and will be subject to the terms and conditions of the Plan in effect as of the grant date and the related stock option agreements. The exercise price for all future stock options granted under the Plan shall be equal to either the then trading price of the Common Stock or the most recent appraisal done for Section 409A compliance process prior to the date of each such grant (which appraisals having been completed within the 12-month period preceding each such grant date). Furthermore, as of the close of business on the date of the Executive’s first day of employment with the Company, the Company’s Compensation Committee shall grant Executive a restricted stock unit award (the “**Initial Restricted Stock Unit Award**”) with respect to 500,000 shares of the Company’s Common Stock (which number of shares of the Company’s Common Stock shall be adjusted from time to time to take into account any stock dividends, forward stock splits and reverse stock splits) which shall vest over the initial three year Term of this Agreement, as follows: the right to purchase 33.333% of such shares of Common Stock shall vest on March 15, 2020, 33.333% of such shares of Common Stock shall vest on March 15, 2021, 33.334% of such shares of Common Stock shall vest on March 15, 2022. The Initial Restricted Stock Unit Award is subject to the terms and conditions set forth in the Plan and the related stock unit award agreement (the “**Award Plan**”); *provided, however*, notwithstanding anything in the Plan or the Award Plan to the contrary, (A) Executive may elect to satisfy any tax withholdings payable in connection with the issuance of shares of the Company’s Common Stock to Executive by having the Company withhold a number of shares of Common Stock that have a fair market value equal to the taxes required to be withheld by the Company, and (B) to the extent of any differences between this Agreement and the Plan or the Award Plan, the provisions of this Agreement shall govern.

(ii) **Other Equity Compensation.** Executive shall also be entitled to participate in any other equity incentive plans of the Company. All such other options or other equity awards will be made at the discretion of the Company's Compensation Committee of the Board of Directors pursuant and subject to the terms and conditions of the applicable equity incentive plan, including any provisions for repurchase thereof. The option exercise price or value of any equity award granted to Executive will be established by the Company's Board of Directors as of the date such interests are granted but shall not be less than the fair market value (determined as of the date such interests are granted) of the class of equity underlying such award. Except with respect to any restricted stock unit awards granted to Executive (the "RSUs") (the terms of which shall be governed by the applicable award agreements or this Agreement), all stock options and other equity compensation awards (both time-based vesting and performance-based vesting at target level) granted to Executive that are outstanding on the date of Executive's termination or resignation shall become 100% vested in the event that the Executive's employment is terminated without Cause (as defined herein) or Executive resigns for Good Reason (as defined herein) or if the Executive shall be terminated or shall resign within the period beginning three months before, and ending twelve months following, a Change in Control (as defined in **Exhibit A** hereto (a "**Change in Control Termination**")). In the event of Executive's termination or resignation for any reason, all stock options granted to Executive that are outstanding on the date of such termination or resignation shall remain exercisable until the earlier of (i) the expiration date set forth in the applicable stock option agreement or (ii) the expiration of two (2) year measured from the date of Executive's termination or resignation. The provisions of this Section 3(c)(ii) of this Agreement shall govern the acceleration of Executive's stock options and other equity compensation awards (other than the RSUs) in the event of a Change in Control Termination and the period during which Executive's stock options remain exercisable following Executive's termination or resignation for any reason and shall supersede any provisions to the contrary in any other agreement or document.

(iii) **Equity Bonus Eligibility.** Executive shall also be eligible to receive an annual target incentive bonus in the form of Common Stock as determined by the Compensation Committee, additionally or in the alternative to cash payments described in Section 3(b) of this Agreement.

(d) **Medical Insurance Benefits.** During the Employment Term, the Company shall pay for and make available medical and dental insurance coverage for Executive and his immediate family. The medical and dental insurance coverage shall provide coverage and benefits that are at least comparable to that provided to the Executive at the time of execution of this Agreement. Although such benefits are described in the Company Employee Handbook (a copy of which is attached hereto as Exhibit D), such benefits may be changed at the Company's discretion from time to time provided that the Executive's health and dental benefits shall not be materially changed during the Employment Term.

(e) **Expense Reimbursement and Other Benefits.** The Company promptly shall pay, or reimburse the Executive for, all ordinary and necessary business expenses incurred by him in the performance of his duties hereunder including, but not limited to, first class or business class air travel, expenses and dues associated with Executive's involvement with professional, industry, community, civic and charitable organizations, provided that the Executive properly accounts for all such expenses in accordance with Company policy. In such connection, the Executive shall be entitled to travel on business class air (or first class if no business class is offered on a flight), stay in 4 star hotel accommodations (not to exceed \$550 per night) and shall be reimbursed for all regular and necessary business and entertaining expenses on behalf of the Company provided that proper documentation is retained. The Company shall maintain an executive assistant for the Executive in New York City provided that such person may be required to provide additional support to the Company's operations. The Company acknowledges that the Executive shall spend a majority of his time at the Company's offices in New York City where he will carry out his principal duties. When traveling to Los Angeles on Company business the Executive shall be required to stay in a corporate apartment in or near Century City, Los Angeles CA that is approved by the Executive or other mutually acceptable location that is leased, directly or indirectly by the Company. If the Executive and/or the Company is required by a landlord to lease an apartment in the name of an individual person versus a corporation, the Company shall reimburse the Executive for such lease payments but in no event in excess of \$80,000 per annum.

(f) Other Benefits Plans, Fringe Benefits and Vacations. The Executive shall be eligible to participate in each of the Company's present employee benefit plans, policies or arrangements and any such plans, policies or arrangements that the Company may maintain or establish during the Employment Term and receive all fringe benefits and vacations for which his position makes him eligible in accordance with the Company's policies and the terms and provisions of such plans, policies or arrangements including, but not limited to, the following:

(i) The Company shall, to the fullest extent permitted by the Delaware General Corporation Law, as the same may be amended and supplemented, or by any successor thereto (the "**DGCL**"), indemnify the Executive from and against any and all of the expenses, liabilities or other matters referred to in or covered by the DGCL. The Company shall advance expenses to the fullest extent permitted by the DGCL. The Company shall cover the Executive under such insurance policies as the Company may procure for executive liability and indemnification insurance, to the same extent and providing limits of liability, deductibles and exclusions as may be provided for the Company's Senior Executive Officers and outside directors. For purposes of this Agreement, the term "**Senior Executive Officers**" of the Company shall be the four officers of the Company having the highest annual base salaries. These covenants shall survive termination of this Agreement for any reason for a period of five years from the date of such termination. Notwithstanding the foregoing, the Company shall maintain comprehensive directors' and officers' liability insurance with minimum coverage of \$10,000,000 per occurrence naming the Executive as a named insured.

(ii) Each calendar year during the Employment Term (commencing with the year ending December 31, 2019), but without carryover from year to year (regardless of the Company's general vacation policy), the Executive shall be entitled to vacation of not less than six weeks.

(iii) The Company shall not terminate or change, in such a way as to affect adversely the Executive's rights or reduce his benefits under any Company benefit plan, policy or arrangement now in effect or which may hereafter be established and in which the Executive is eligible to participate, including, without limitation, the Company's Equity Plans, life insurance, medical and disability plans. To the extent that there is a conflict between this Agreement and any policy or plan of the Company, this Agreement supersedes any other policy or plan of the Company.

#### 4. Termination.

##### (a) Death and Disability.

(i) The Executive's employment hereunder and the Employment Term shall terminate upon his death or upon his becoming Totally Disabled. For purposes of this Agreement, the Executive shall be "**Totally Disabled**" if he is physically or mentally incapacitated so as to render him incapable of performing his usual and customary duties as an executive for a period expected to last not less than six (6) consecutive months during which he receives income replacement benefits from an employer-provided health and accident plan for at least twelve months. The Executive's receipt of Social Security disability benefits shall be deemed conclusive evidence of Total Disability for purposes of this Agreement; provided, however, that in the absence of his receipt of such Social Security benefits, the Board of Directors of the Company may, in its reasonable discretion, but based upon appropriate medical evidence, determine that the Executive is Totally Disabled as provided in Treas. Reg. § 1.409A-3(i)(4).

(ii) If Executive dies or becomes Totally Disabled during the Employment Term, the Executive or his estate, as the case may be, shall be entitled to receive: (i) all accrued but unpaid Base Salary; (ii) a bonus for any prior year that has been earned but is unpaid, (iii) assuming the Performance Goals are achieved in the year in which the Executive has died or becomes Totally Disabled, a bonus payable within 90 days following such year, pro-rated based on the number of months in which the Executive worked in such year, and (iv) any vested stock options or other equity or equity like grants, including the RSU's and any Initial Restricted Stock Unit Award shall remain outstanding and shall be owned by the Executive or his estate.

(b) For Cause. The Executive's employment hereunder may be terminated for Cause. For purposes of this Agreement, the term "Cause" shall mean: (i) the Executive's refusal to perform material duties reasonably required or requested of him hereunder (other than as a result of total or partial incapacity due to physical or mental illness) by the Board of Directors and consistent with the terms hereof, after having received written notice of such directions and his refusal from the Board of Directors and having failed to commence to perform such duties within ten (10) days after receipt of such written directions from the Board, (ii) the Executive's commission of actions constituting fraud, dishonesty or acts of moral turpitude (including sexual misconduct as defined in the Company employee handbook) in the performance of his duties hereunder or (iii) any act or acts on the Executive's part constituting a felony under the laws of the United States or any state thereof which results or was intended to result directly or indirectly in gain or personal enrichment by Executive at the expense of the Company. If the Executive's employment is terminated for Cause, the Executive shall be entitled only to receive: (i) all accrued but unpaid Base Salary through the date of termination; and (ii) a bonus for any prior year that has been earned but is unpaid. All Options or other equity or equity like grants, including all non-vested RSU's and any unvested Initial Restricted Stock Award shall terminate and be of no further force or effect. Notwithstanding the forgoing, if the Executive is terminated for Cause following a Change of Control, all Options or other equity or equity like grants, including all RSU's and any Initial Restricted Stock Award as of the date of the Change of Control shall remain vested following a termination for Cause which happens after a Change of Control.

(c) Without Cause/For Good Reason. If the Executive's employment hereunder is terminated without Cause or if the Executive terminates his employment for "Good Reason", the Company shall, as soon as practicable, but, subject to Section 5 below, not later than 30 days after such termination without Cause or for "Good Reason", pay to the Executive: (i) all accrued but unpaid Base Salary through the remainder of the Employment Term, but not less than 12 months, payable on a monthly basis; (ii) a bonus for any prior year that has been earned but is unpaid, and (iii) assuming the Performance Goals are achieved in the year in which termination without Cause or for "Good Reason" shall have occurred, a bonus payable within 90 days following such year, pro-rated based on the number of months in which the Executive worked in such year. In addition, the vesting of all Options or other equity or equity like grants, including the vesting of all RSU's and any Initial Restricted Stock Award shall be accelerated so as to permit Executive fully to exercise all outstanding Options and rights, if any, granted to Executive during the Employment Term pursuant to such plans. For purposes of this Agreement, "Good Reason" shall be limited to a material breach of this Agreement by the Company or the filing of bankruptcy protection or reorganization by the Company. No breach referred to herein shall constitute Good Reason if the Company shall have cured all matters within 30 days following written notice from Employee, or if such matters are not reasonably susceptible of being cured or corrected within such 30-day period, the Company shall have instituted appropriate action to cure and correct such matters and thereafter pursue the same diligently to completion in a commercially reasonable period of time. Notwithstanding the foregoing, the failure by the Company to pay the Executive amounts due under this Agreement within thirty (30) days of the due date shall be deemed a breach of this Agreement by the Company and the Executive shall be entitled to terminate this Agreement for Good Reason without further action.

(d) Change in Control: Material Change.

(i) If a Change in Control Event (as defined in Exhibit A hereto) occurs, all RSU's and any Initial Restricted Stock Award shall be accelerated and vested immediately and all other Options or other equity or equity like grants shall become exercisable immediately prior to the occurrence of the transaction giving rise to the Change in Control Event at Executive's election, so as to permit Executive fully to exercise all outstanding Options or other equity or equity like grants. In the event that such transaction fails to be consummated, Executive's election pursuant hereto shall be of no effect and all RSU's and any Initial Restricted Stock Award and Options or other equity or equity like grants shall remain subject to the restrictions to which they were originally subject. At the Executive's election, the Executive may exercise all such rights after the closing of such transaction.

(ii) If a Change in Control Event (as defined in Exhibit A hereto) shall occur, followed within two years by a Material Change (as defined in Exhibit A hereto), the Executive shall, if he so elects by written notice to the Company within thirty days of a Material Change that is not corrected following notice, be entitled to terminate his employment, if not already terminated by the Company. In that event, the Executive shall receive the amounts set forth in Section 4(c) above, and the Executive shall be entitled to the accelerated vesting of 50% of all Options, RSU's and any Initial Restricted Stock Award and rights as provided in Section 4(d)(i) above and the 50% balance not later than six (6) months following such Change of Control or Material Change.

(iii) Notwithstanding anything to the contrary herein, if the aggregate amounts payable pursuant to subparagraph (ii) of this paragraph (d), either alone or together with any other payments which the Executive has the right to receive either directly or indirectly from the Company or any of its affiliates, would be subject to an excise tax as an "excess parachute payment" under Section 4999 of the Internal Revenue Code, the Executive hereby agrees that such aggregate amounts payable hereunder shall be paid in annual installments over the shortest period of time over which such aggregate amounts may be paid and not be treated as "excess parachute payments" under Section 4999. All determinations called for in this subparagraph (iii) shall be made by an independent public accounting firm as shall be selected by the Company. The Company shall bear all costs associated with obtaining such determinations. At the Executive's election, and if permitted by applicable law, the Executive shall be entitled to the immediate payment of all amounts due the executive hereunder and the Company shall be required to "gross up" such amounts so that the Executive receives an amount that he would have received had Section 4999 not been applicable.

5. Specified Executive Status. Executive is likely to be a specified employee (as defined in Treas. Reg. §1.409A-1(i)) as of the date of a separation from service. Notwithstanding anything contained herein to the contrary, all payments hereunder that are subject to the restrictions contained in Section 409A of the Internal Revenue Code and are to be made due to a separation from service or Change in Control may not be made before the date that is six months after the date of separation from service (or, if earlier than the end of the six-month period, the date of the Executive's death). For this purpose, if the Executive is not a specified employee as of the date of a separation from service, he will not be treated as subject to this requirement even if he would have become a specified employee had he continued to provide services through the next specified employee effective date. Similarly, if the Executive is treated as a specified employee as of the date of a separation from service, he will be subject to this requirement even if he would not have been treated as a specified employee after the next specified employee effective date had he continued providing services through the next specified employee effective date.

## 6. Covenants.

(a) Confidentiality. The Executive agrees that, during or at any time after the Employment Term, he shall not divulge, furnish or make accessible to any person, corporation, partnership, trust or other organization or entity, any information, trade secrets, technical data or know-how relating to the business, business practices, methods, attorney-client communications, pending or contemplated acquisitions or other transactions, products, processes, equipment or any confidential or secret aspect of the business of the Company without the prior written consent of the Company, unless such information shall have become public knowledge or shall have become known generally to competitors of the Company through sources other than the Executive.

(b) Competitive Activity. Executive hereby agrees that during the Employment Term and one year after the termination of this Agreement (the "**Restricted Period**"), Executive will not, and will cause his affiliates not to, without the prior written consent of the board of directors of the Company (which may be withheld in their sole discretion), anywhere within the United States or any other markets in which the Company or its Subsidiaries operates the Business as of the Effective Date (the "**Territory**"), directly or indirectly engage in the Business as materially conducted by the Company and its Subsidiaries as of the Effective Date, or own, manage, finance or control, or participate in the ownership, management, financing or control of, or become engaged or serve as an officer, director, member, partner, employee, agent, consultant, advisor or representative of, a business or entity that engages in the Business (a "**Competitor**"). For the purposes hereof, the term "**Business**" shall be defined as the ownership of any physical or digital cannabis based publication and/or the production of consumer focused cannabis events. Notwithstanding the foregoing, the Company acknowledges that the Executive provides personal and consulting services to bands that may, in the future, be invited or paid to perform at consumer focused cannabis events and that shall not be restricted behavior pursuant to the terms hereof. Furthermore, the Company and Executive acknowledge the Executive has interests in various cannabis related businesses and, to the extent that those businesses have, in the future, business relationships with the Company that are known to the Executive, the Executive shall disclose such relationships to the Board of Directors of the Company, and to avoid the appearance of any conflict of interest, shall either (i) obtain the approval of the disinterested directors of such business relationships, or (ii) insure that such business relationships are fair and reasonable to the Company and its subsidiaries. Notwithstanding the foregoing, Executive and his Affiliates may own passive portfolio company investments of not more than four and 99/100 percent (4.99%) beneficial ownership of any class of outstanding capital stock of a Competitor that is publicly traded on a national stock exchange, so long as Executive and his Affiliates are not involved in the management or control of such Competitor. Notwithstanding the foregoing, the provisions of this Section 6(b) shall terminate and be of no force nor effect if the Executive is terminated without Cause or if the Executive terminates this Agreement for Good Reason.

(c) Remedy for Breach. The Executive acknowledges that the provisions of this Section 6 are reasonable and necessary for the protection of the Company and that the Company will be irrevocably damaged if such covenants are not specifically enforced. Accordingly, the Executive agrees that, in addition to any other relief to which the Company may be entitled, the Company shall be entitled to seek and obtain injunctive relief (without the requirement of any bond) from a court of competent jurisdiction for the purposes of restraining the Executive from any actual or threatened breach of such covenants.

7. Miscellaneous.

(a) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York applicable to agreements made and to be performed in that State.

(b) Notices. Any notice, consent or other communication made or given in connection with this Agreement shall be in writing and shall be deemed to have been duly given when delivered by United States registered or certified mail, return receipt requested, to the parties at the following addresses or at such other address as a party may specify by notice to the other.

To the Executive:

Kraig Fox  
c/o Adam Berman Esq.  
420 Lexington Ave # 2516  
New York, NY 10170

To the Company:

Hightimes Holding Corp.  
10990 Wilshire Blvd  
Penthouse  
Los Angeles, CA 90024  
Attn: Adam E. Levin, Chairman

(c) Entire Agreement; Construction; Amendment. This Agreement shall supersede any and all existing agreements between the Executive and the Company or any of its affiliates or subsidiaries relating to the terms of his employment. The parties acknowledge that Options have been granted to the Executive under the Equity Plans. Accordingly, to the extent the provisions of this Agreement may conflict with the Equity Plans, the Equity Plans shall control. To the extent the provisions of this Agreement may conflict with provisions in any option agreement or option certificate between the Executive and the Company, the provisions of this Agreement shall control. This Agreement may not be amended except by a written agreement signed by both parties.

(d) Waiver. The failure of a party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver thereof or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.

(e) Certain Representations and Covenants of the Parties.

(i) As a condition of employment, the Executive shall be required to sign and return a satisfactory I-9 Immigration form providing sufficient documentation establishing your employment eligibility in the United States, and provide satisfactory proof of Executive's identity as required by United States law. Executive's employment is further subject to satisfactory completion of a background check.

(ii) Executive represents that his performance of services to the Company will not violate any duty which he may have to any other person or entity (such as a present or former employer), including obligations concerning providing services (whether or not competitive) to others, confidentiality of proprietary information and assignment of inventions, ideas, patents or copyrights. Executive further agrees that he will not do anything in the performance of services hereunder that would violate any such duty.

(iii) The Company hereby represents and warrants to Fox that the Board of Directors of the Company has adopted one or more resolutions making the Executive Chairman of the Company the highest ranking senior executive officer of the Company.

(f) Assignment. Except as otherwise provided in this paragraph, this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, representatives, successors and assigns. This Agreement shall not be assignable by the Executive, and shall be assignable by the Company only to any corporation or other entity resulting from the reorganization, merger or consolidation of the Company with any other corporation or entity or any corporation or entity to which the Company may sell all or substantially all of its assets, and it must be so assigned by the Company to, and accepted as binding upon it, by such other corporation or entity in connection with any such reorganization, merger, consolidation or sale.

(g) Litigation Costs. In the event that the Executive shall successfully prosecute a proceeding to enforce any provision of this Agreement, in addition to any other relief awarded the Executive in such action, the parties agree that the decision rendered shall award the Executive all of his attorneys' fees, disbursements and other costs incurred by the Executive in prosecuting such case.

(h) Severability. If any provision of this Agreement is invalid or unenforceable, the balance of the Agreement shall remain in effect, and if any provision is inapplicable to any person or circumstance, it shall nevertheless remain applicable to all other persons and circumstances.

(i) Dispute Resolution. Any controversy, dispute or claim arising out of or relating to this Agreement or breach thereof shall first be settled through good faith negotiation. If the dispute cannot be settled through negotiation. If the parties are unsuccessful at resolving the dispute through mediation, the parties agree to arbitration administered in New York, New York by JAMS pursuant to its Employment Arbitration Rules & Procedures and subject to JAMS Policy on Employment Arbitration Minimum Standards of Procedural Fairness. Judgment on the Award may be entered in any court having jurisdiction.

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IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement, including Appendix A hereto, as evidence of their adoption as of the dates set forth above.

**HIGHTIMES HOLDING CORP.,**  
a Delaware corporation

By: /s/ Adam E. Levin  
Name: Adam E. Levin  
Title: Executive Chairman  
Date:

**EXECUTIVE**

/s/ Kraig G. Fox  
Name: Kraig G. Fox  
Date:

## **EXHIBIT A**

### **Change of Control and Material Change**

The term "Change of Control" means either

(a) the sale of a majority of the issued and outstanding shares of voting capital stock of Hightimes, whether pursuant to merger, consolidation, tender offer or like combination, or the sale of substantially all of the assets and businesses of Hightimes and its Subsidiaries, in any transaction (or series of transactions) with any Person who is not an "Affiliate" (as that term is defined in Rule 405 promulgated under the Securities Act of 1933, as amended) immediately prior to such transaction (or series of transactions), and as a result of which the power to elect a majority of the members of the board of directors of Hightimes or the surviving Person shall be vested in such non-Affiliate Person, or

(b) a "going private" transaction which is a transaction or series of transactions resulting in the purchase of a security of Hightimes or one of its Affiliates by the issuer or one of its Affiliates, or a purchase of the assets of Hightimes or one of its Affiliates, in each case, that has either a reasonable likelihood or the purpose of producing, either directly or indirectly, the effect of causing a class of equity securities of an issuer subject to Section 12(g) or Section 15(d) of the Exchange Act (a) to be held by fewer than 300 persons or (b) to be delisted or no longer authorized to be quoted on an inter-dealer quotation system of a registered national securities exchange. A "going private" transactions can result in an issuer converting to private ownership, including, but not limited to:

- Another entity or individual makes a tender offer to buy all or most of the issuer's publicly held shares ("Tender Offer");
- The issuer merges with or sells the issuer's assets to another entity for cash ("Cash Merger"); or
- The issuer declares a reverse stock split that not only reduces the number of shares but also reduces the number of shareholders.

For the avoidance of doubt, any transaction that would be a "going private" transaction but for the fact that the purchaser is not the issuer or one of its Affiliates shall constitute a "Change of Control" under clause (a).

The term "Material Change" means the investment or acquisition by Hightimes and its direct or indirect consolidated Subsidiaries in one or more businesses or assets that are not related to the cannabis industry and which non-related investments or acquisitions then represent more than 50% of the consolidated assets and business revenues of Hightimes and its direct or indirect consolidated Subsidiaries.





As of March 28, 2019

Kraig G. Fox  
do Adam Berman, Esq.  
420 Lexington Avenue, Suite 2516  
New York, NY 10170

Dear Kraig:

We are pleased to advise you that at the direction of the Board of Directors (the "Board") of **Hightimes Holding Corp.**, a Delaware corporation (the "Company," you are hereby notified that the Board and the Compensation Committee of the Board has granted you a qualified stock option (the "Option") pursuant to the 2017 Equity Incentive Plan as adopted by the Company and as in effect on the date of the grant (the "Plan").

This Option entitles you to purchase 650,000 shares of Class A voting Common Stock of the Company (the "Option Shares") at the price of \$11.00 per which is payable in cash or by check in United States Dollars, or other property acceptable to the Compensation Committee of the Board. The date of grant of this Option is March 15, 2019, being the Effective Date of your employment agreement with the Company (the "Employment Agreement"), and it is the determination of the Board that on that date, as well as March 27, 2019 (the date of execution of this letter), the fair market value of the Company's Common Stock was \$11.00 per share.

The Option must be exercised, if at all, on or before March 15, 2029 (ten years from the effective date of grant), after which any unexercised Options will expire.

All vesting of the Option and any forfeiture or earlier termination of a vested or non-vested Option shall be governed by the terms of your Employment Agreement.

Except as described below, the Option is subject to the terms, conditions and restrictions of the Plan and your Employment Agreement as in effect on the date of the grant. Copies of the Plan are available to you on request. At the time or times you wish to exercise this Option in whole or in part, please refer to this letter and the provisions of your Employment Agreement and the Plan dealing with methods and formalities of exercising your option.

In addition to the Option, we are pleased to advise you that the Board and the Compensation Committee of the Board have also granted to you a restricted stock unit award (the "Initial Restricted Stock Unit Award") with respect to 500,000 additional shares of the Company's Common Stock (subject to adjustment as provided in your Employment Agreement"). The vesting and other terms of the Initial Restricted Stock Unit Award are subject at all times to the applicable provisions of your Employment Agreement.

In the event that the Company elects, in the exercise of its sole discretion, to register under the Securities Act of 1933, as amended (the "Securities Act"), shares of Company Common Stock for resale for the benefit of other selling stockholders who are officers, directors or "affiliates" (as that term is defined in Rule 405 under the Securities Act) of the Company pursuant to a registration statement filed with and declared effective by the SEC, or registers for resale stock options on Form S-8 under the Securities Act, it will include in any such registration statement, your vested Options and vested Initial Restricted Stock Unit Award shares; provided, that you then make appropriate representations as to your ownership of such securities and other information concerning yourself that is to be disclosed in such registration statement.

Please acknowledge below receipt of this letter agreement and your approval of the terms hereof.

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We look forward to your continued association with the Company and its subsidiaries.

Sincerely,

**HIGHTIMES HOLDING CORP.**

Date: March 27, 2019

By: /s/ Adam E. Levin  
Adam E. Levin  
Executive Chairman

The foregoing letter agreement is hereby acknowledged and accepted:

Date: March 27, 2019

/s/ Kraig G. Fox  
Kraig G. Fox



**AMENDED AND RESTATED  
BYLAWS  
OF  
HIGHTIMES HOLDING CORP.  
(a Delaware Corporation)**

ARTICLE I OFFICES

Section 1.01. Registered Office. The registered office of the corporation in the State of Delaware shall be 1811 Silverside Road, City of Wilmington, County of New Castle, Delaware 19810. The name of its registered agent at such address is Vcorp Services, LLC.

Section 1.02. Location of Offices. The corporation may also have offices at such other places both within and without the State of Delaware as the board of directors may from time to time determine or the business of the corporation may require.

Section 1.03. Corporate Seal. The board of directors may adopt a corporate seal. The corporate seal shall consist of a die bearing the name of the corporation and the inscription, "Corporate Seal, Delaware." Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

ARTICLE II STOCKHOLDERS

Section 2.01. Annual Meeting. The annual meeting of the stockholders of the corporation, for the purpose of election of directors and for such other business as may lawfully come before it, shall be held on such date and at such time as may be designated from time to time by the board of directors.

Section 2.02. Special Meetings. Special meetings of the stockholders, for any purpose or purposes, unless otherwise prescribed by statute or by the certificate of incorporation, may be called by (i) the chairman of the board of directors, (ii) the chief executive officer, (iii) the president or (iii) the board of directors pursuant to a resolution adopted by a majority of the total number of authorized directors (whether or not there exist any vacancies in previously authorized directorships at the time any such resolution is presented to the board of directors for adoption).

Section 2.03. Place of Meetings. All meetings of the stockholders for the election of directors shall be held at such place as may be fixed from time to time by the board of directors, or at such other place either within or without the State of Delaware as shall be designated from time to time by the board of directors and stated in the notice of the meeting. Meetings of stockholders for any other purpose may be held at such time and place, within or without the State of Delaware, as shall be stated in the notice of the meeting or in a duly executed waiver of notice thereof.

Section 2.04. Notice of Meetings. Written notice of the time, place and purpose or purposes of all meetings of the stockholders (whether annual or special) shall be given to each stockholder entitled to vote at such meeting not less than ten (10) nor more than sixty (60) days before the date of the meeting. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the corporation.

Section 2.05. Waiver of Notice. Notice of the time, place, if any, and purpose of any meeting of stockholders (however called or noticed, whether or not called or noticed, and whether before during or after the meeting) may be waived in writing, signed by the person entitled to notice thereof, or by electronic transmission by such person, either before or after such meeting, and will be waived by any stockholder by his attendance thereat in person, by remote communication, if applicable, or by proxy, except when the stockholder attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Any stockholder so waiving notice of such meeting shall be bound by the proceedings of any such meeting in all respects as if due notice thereof had been given.

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Section 2.06. Fixing Record Date.

(a) In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the board of directors may fix, in advance, a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the board of directors, and which record date shall, subject to applicable law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If no record date is fixed by the board of directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the board of directors may fix a new record date for the adjourned meeting.

(b) In order that the corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the board of directors may fix, in advance, a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty (60) days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the board of directors adopts the resolution relating thereto.

Section 2.07. List Of Stockholders. The secretary shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at said meeting, arranged in alphabetical order, showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (b) during ordinary business hours, at the principal place of business of the corporation. In the event that the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to stockholders of the corporation. The list shall be open to examination of any stockholder during the time of the meeting as provided by law.

Section 2.08. [Reserved].

Section 2.09. Quorum and Adjournment.

(a) At all meetings of stockholders, except where otherwise provided by statute, by the certificate of incorporation, or by these bylaws, the presence, in person, by remote communication, if applicable, or by proxy duly authorized, of the holders of a majority of the outstanding shares of stock entitled to vote, shall constitute a quorum for the transaction of business. In the absence of a quorum, any meeting of stockholders may be adjourned, from time to time, either by the chairman of the meeting or by vote of the holders of a majority of the shares represented thereat, but no other business shall be transacted at such meeting. The stockholders present at a duly called or convened meeting, at which a quorum is present, may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum.

(b) Any meeting of stockholders, whether annual or special, may be adjourned from time to time either by the chairman of the meeting or by the vote of a majority of the shares present in person, by remote communication, if applicable, or represented by proxy at the meeting. When a meeting is adjourned to another time or place, if any, notice need not be given of the adjourned meeting if the time and place, if any, thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 2.10. Vote Required. Except as otherwise provided by the certificate of incorporation or these bylaws, in all matters other than the election of directors, the affirmative vote of the majority of shares present in person, by remote communication, if applicable, or represented by proxy at the meeting and entitled to vote generally on the subject matter shall be the act of the stockholders. Except as otherwise provided by statute, the certificate of incorporation or these bylaws, directors shall be elected by a plurality of the votes of the shares present in person, by remote communication, if applicable, or represented by proxy at the meeting and entitled to vote generally on the election of directors. Where a separate vote by a class or classes or series is required, except where otherwise provided by the statute or by the certificate of incorporation or these bylaws, a majority of the outstanding shares of such class or classes or series, present in person, by remote communication, if applicable, or represented by proxy duly authorized, shall constitute a quorum entitled to take action with respect to that vote on that matter. Except where otherwise provided by statute or by the certificate of incorporation or these bylaws, the affirmative vote of the majority (plurality, in the case of the election of directors) of shares of such class or classes or series present in person, by remote communication, if applicable, or represented by proxy at the meeting shall be the act of such class or classes or series.

Section 2.11. Voting of Stock. Unless otherwise provided in the certificate of incorporation, each stockholder shall at every meeting of the stockholders entitled to one vote in person or by proxy for each share of the capitals stock having voting power held by such stockholder, subject to the modification of such voting rights of any class or classes of the corporation's capital stock by the certificate of incorporation. For the purpose of determining those stockholders entitled to vote at any meeting of the stockholders, except as otherwise provided by law, only persons in whose names shares stand on the stock records of the corporation on the record date, as provided in Section 2.06 of these bylaws, shall be entitled to vote at any meeting of stockholders. Every person entitled to vote shall have the right to do so either in person, by remote communication, if applicable, or by an agent or agents authorized by a proxy granted in accordance with Delaware law. An agent so appointed need not be a stockholder.

Section 2.12. Proxies. At each meeting of the stockholders, each stockholder entitled to vote shall be entitled to vote in person or by proxy; provided, however, that the right to vote by proxy shall exist only in case the instrument authorizing such proxy to act shall have been executed in writing by the registered holder or holders of such stockholder, as the case may be, as shown on the stock ledger of the corporation or by his attorney thereunto duly authorized in writing. Such instrument authorizing a proxy to act shall be delivered at the beginning of such meeting to the secretary of the corporation or to such officer or person who may, in the absence of the secretary, be acting as secretary of the meeting. In the event that any such instrument shall designate two (2) or more persons to act as proxy, a majority of such persons present at the meeting, or if only one (1) be present, that one (1) shall (unless the instrument shall otherwise provide) have all of the powers conferred by the instrument on all persons so designated. Persons holding stock in a fiduciary capacity shall be entitled to vote the stock so held and the persons whose shares are pledged shall be entitled to vote, unless the transfer by the pledgor in the books and records of the corporation shall have expressly empowered the pledgee to vote thereon, in which case the pledgee, or his proxy, may represent such stock and vote thereon. No proxy shall be voted after three (3) years from its date of creation unless the proxy provides for a longer period.

Section 2.13. Nomination of Directors and Business at Annual Meetings

(a) Only persons who are nominated in accordance with the procedures set forth in this section shall be eligible for election as directors. Nominations of persons for election to the board of directors of the corporation and the proposal of business to be considered by the stockholders may be made at an annual meeting of stockholders: (i) pursuant to the corporation's notice of meeting of stockholders; (ii) by or at the direction of the board of directors; or (iii) by any stockholder of the corporation who was a stockholder of record at the time of giving the stockholder's notice provided for in the following paragraph, who is entitled to vote at the meeting and who complied with the notice procedures set forth in this Section 2.12; provided, however, that clause (iii) above shall be the exclusive means for a stockholder to make nominations and submit other business (other than matters properly brought under Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "1934 Act") and included in the corporation's notice of meeting of stockholders) before an annual meeting of stockholders.

(b) At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of Section 2.12(a) of these bylaws, (i) the stockholder must have given timely notice thereof in writing to the secretary of the corporation, (ii) such other business must be a proper matter for stockholder action under the Delaware General Corporation Law, (iii) if the stockholder, or the beneficial owner on whose behalf any such proposal or nomination is made, has provided the corporation with a Solicitation Notice (as defined in clause (iii) of the last sentence of this Section 2.12 (b)), such stockholder or beneficial owner must, in the case of a proposal, have delivered a proxy statement and form of proxy to holders of at least the percentage of the corporation's voting shares required under applicable law to carry any such proposal, or, in the case of a nomination or nominations, have delivered a proxy statement and form of proxy to holders of a percentage of the corporation's voting shares reasonably believed by such stockholder or beneficial owner to be sufficient to elect the nominee or nominees proposed to be nominated by such stockholder, and must, in either case, have included in such materials the Solicitation Notice, and (iv) if no Solicitation Notice relating thereto has been timely provided pursuant to this section, the stockholder or beneficial owner proposing such business or nomination must not have solicited a number of proxies sufficient to have required the delivery of such a Solicitation Notice under this Section 2.12. To be timely, a stockholder's notice shall be delivered to the secretary at the principal executive offices of the corporation not later than the close of business on the ninetieth (90th) day nor earlier than the close of business on the one hundred twentieth (120th) day prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is advanced more than thirty (30) days prior to or delayed by more than thirty (30) days after the anniversary of the preceding year's annual meeting, notice by the stockholder to be timely must be so delivered not earlier than the close of business on the one hundred twentieth (120th) day prior to such annual meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such annual meeting or the tenth (10th) day following the day on which public announcement of the date of such meeting is first made. In no event shall the public announcement of an adjournment of an annual meeting commence a new time period for the giving of a stockholder's notice as described above. Such stockholder's notice shall set forth: (A) as to each person whom the stockholder proposed to nominate for election or reelection as a director all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to Regulation 14A under the 1934 Act and Rule 14a-4(d) thereunder (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected); (B) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; and (C) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (i) the name and address of such stockholder, as they appear on the corporation's books, and of such beneficial owner, (ii) the class and number of shares of the corporation which are owned beneficially and of record by such stockholder and such beneficial owner, and (iii) whether either such stockholder or beneficial owner intends to deliver a proxy statement and form of proxy to holders of, in the case of the proposal, at least the percentage of the corporation's voting shares required under applicable law to carry the proposal or, in the case of a nomination or nominations, a sufficient number of holders of the corporation's voting shares to elect such nominee or nominees (an affirmative statement of such intent, a "Solicitation Notice").

(c) Notwithstanding anything in the third sentence of Section 2.12 (b) of these bylaws to the contrary, in the event that the number of directors to be elected to the board of directors of the corporation is increased and there is no public announcement naming all of the nominees for director or specifying the size of the increased Board of Directors made by the corporation at least one hundred (100) days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Section 2.12 shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the secretary at the principal executive offices of the corporation not later than the close of business on the tenth (10th) day following the day on which such public announcement is first made by the corporation.

(d) Only such persons who are nominated in accordance with the procedures set forth in this Section 2.12 shall be eligible to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 2.12. Except as otherwise provided by law, the chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made, or proposed, as the case may be, in accordance with the procedures set forth in these bylaws and, if any proposed nomination or business is not in compliance with these bylaws, to declare that such defective proposal or nomination shall not be presented for stockholder action at the meeting and shall be disregarded.

(e) Notwithstanding the foregoing provisions of this Section 2.12, in order to include information with respect to a stockholder proposal in the proxy statement and form of proxy for a stockholders' meeting, a stockholder must also comply with all applicable requirements of the 1934 Act and the rules and regulations thereunder with respect to matters set forth in this Section 2.12. Nothing in these Bylaws shall be deemed to affect any rights of stockholders to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 under the 1934 Act.

(f) For purposes of this Section 2.12, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the 1934 Act.

Section 2.14. Inspectors of Election. There shall be appointed two inspectors of the vote. Such inspectors shall first take and subscribe an oath or affirmation faithfully to execute the duties of inspector at such meeting with strict impartiality and according to the best of their ability. Unless appointed in advance of any such meeting by the board of directors, such inspectors shall be appointed for the meeting by the presiding officer. No director or candidate for the office of director shall be appointed as such inspector. Such inspectors shall be responsible for tallying and certifying each vote required to be tallied and certified by them as provided in the resolution of the board of directors appointing them or in their appointment by the person presiding at such meeting, as the case may be.

Section 2.15. Election of Directors. At all meetings of the stockholders at which directors are to be elected, except as otherwise set forth in any preferred stock designation (as defined in the certificate of incorporation) with respect to the right of the holders of any class or series of preferred stock to elect additional directors under specified circumstances, directors shall be elected by a plurality of the votes cast at the meeting, as provided for in Section 2.09 hereto. The election need not be by ballot unless any stockholder so demands before the voting begins. Except as otherwise provided by law, the certificate of incorporation, any preferred stock designation, or these bylaws, all matters other than the election of directors submitted to the stockholders at any meeting, shall be decided by a majority of the votes cast with respect thereto.

Section 2.16. **[Reserved]**

Section 2.17. Business at Special Meeting

(a) Written notice of a special meeting stating the place, date and hour of the meeting and the purpose or purposes for which the meeting is called, shall be given not fewer than ten (10) nor more than sixty (60) days before the date of the meeting, to each stockholder entitled to vote at such meeting. Business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice.

(b) Nominations of persons for election to the board of directors may be made at a special meeting of stockholders at which directors are to be elected pursuant to the corporation's notice of meeting (i) by or at the direction of the board of directors or (ii) by any stockholder of the corporation who is a stockholder of record at the time of giving notice provided for in this paragraph who shall be entitled to vote at the meeting and who complies with the notice procedures set forth in Section 2.12 of these bylaws. In the event the corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the board of directors, any such stockholder may nominate a person or persons (as the case may be), for election to such position(s) as specified in the corporation's notice of meeting, if the stockholder's notice required by Section 2.12 (b) of these bylaws shall be delivered to the secretary at the principal executive offices of the corporation not earlier than the close of business on the one hundred twentieth (120th) day prior to such special meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such meeting or the tenth (10th) day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the board of directors to be elected at such meeting. In no event shall the public announcement of an adjournment of a special meeting commence a new time period for the giving of a stockholder's notice as described above.

(c) Notwithstanding the foregoing provisions of this Section 2.16, a stockholder must also comply with all applicable requirements of the 1934 Act and the rules and regulations thereunder with respect to matters set forth in this Section 2.16. Nothing in these bylaws shall be deemed to affect any rights of stockholders to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 under the 1934 Act.

Section 2.18. Written Consent to Action by Stockholders. Any action which can be taken by the stockholders at an annual or special meeting of stockholders called in accordance with these bylaws and the certification of incorporation, may also be taken by written consent of the holders of a majority of the outstanding voting Common Stock of the Corporation; provided, that, the Corporation shall notify all stockholders of any such action taken by written consent and, to the extent applicable, shall comply with Rule 14(f) of the Securities Exchange Act of 1934, as amended.

Section 2.19. Procedure for Meetings.

(a) At every meeting of stockholders, the chairman of the board of directors, or, if a chairman has not been appointed or is absent, the chief executive officer, or, if the chief executive officer is absent, the president, or, if the president is absent, a chairman of the meeting chosen by a majority in interest of the stockholders entitled to vote, present in person or by proxy, shall act as chairman. The secretary, or, in his or her absence, an assistant secretary directed to do so by the chief executive officer or president, shall act as secretary of the meeting.

(b) Meeting of the stockholders shall be conducted pursuant to such reasonable rules of conduct and protocol as the board of directors may prescribe or, if no such rules are prescribed, in accordance with the most recent published edition of Roberts Rules of Order. Subject to such rules and regulations of the board of directors, if any, the chairman of the meeting shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are necessary, appropriate or convenient for the proper conduct of the meeting, including, without limitation, establishing an agenda or order of business for the meeting, rules and procedures for maintaining order at the meeting and the safety of those present, limitations on participation in such meeting to stockholders of record of the corporation and their duly authorized and constituted proxies and such other persons as the chairman shall permit, restrictions on entry to the meeting after the time fixed for the commencement thereof, limitations on the time allotted to questions or comments by participants and regulation of the opening and closing of the polls for balloting on matters which are to be voted on by ballot. The date and time of the opening and closing of the polls for each matter upon which the stockholders will vote at the meeting shall be announced at the meeting.

ARTICLE III DIRECTORS

Section 3.01. General Powers. The business of the corporation shall be managed by or under the direction of its board of directors which may exercise all such powers of the corporation and do all such lawful acts and things as are not by statute or by the certificate of incorporation or by these bylaws directed or required to be exercised or done by the stockholders.

Section 3.02. Number, Term, Qualifications and Classification.

(a) The authorized number of directors of the corporation shall be fixed by the board of directors from time to time. Directors need not be stockholders unless so required by the board of directors. If for any cause, the directors shall not have been elected at an annual meeting, they may be elected as soon thereafter as convenient at a special meeting of the stockholders called for that purpose in the manner provided in these bylaws.

(b) Upon the adoption of a resolution by the board of directors of the Corporation to the following effect, the directors may be divided into three classes, designated Class I, Class II and Class III. Each class shall consist, as nearly as may be possible, of one-third of the total number of directors constituting the entire board of directors. The initial division of the board of directors into classes shall be made by the decision of the affirmative vote of a majority of the entire board of directors. The terms of the initial Class I, Class II and Class III directors shall commence at next annual meeting of the stockholders subsequent to the adoption of these bylaws. At the first annual meeting of stockholders following the adoption of these bylaws, the term of office of the Class I directors shall expire and Class I directors shall be elected for a full term of three years. At the second annual meeting of stockholders following the adoption of these bylaws, the term of office of the Class II directors shall expire and Class II directors shall be elected for a full term of three years. At the third annual meeting of stockholders following the adoption of these bylaws, the term of office of the Class III directors shall expire and Class III directors shall be elected for a full term of three years. At each succeeding annual meeting of stockholders, directors shall be elected for a full term of three years to succeed the directors of the class whose terms expire at such annual meeting. Notwithstanding the foregoing provisions of this Article, each director shall serve until his successor is duly elected and qualified or until his death, resignation or removal. No decrease in the number of directors constituting the board of directors shall shorten the term of any incumbent director.

Section 3.03. Vacancies and Newly Created Directorships. Any vacancy on the board of directors that results from an increase in the number of directors may be filled by a majority of the board of directors then in office, though less than a quorum, or by a sole remaining director. Any vacancy on the board of directors that results from death, resignation, disqualification, removal or other cause, may be filled by a majority of the board of directors then in office, though less than a quorum, or by a sole remaining director. If the board of directors is not classified, then any director so chosen shall hold office until the next annual election and until his or her successor is duly elected and shall qualify. If the board of directors is classified, then each director of any class elected to fill a vacancy resulting from an increase in the number of directors of such class shall hold office for a term that shall coincide with the remaining term of that class. Any director elected to fill a vacancy not resulting from an increase in the number of directors shall have the same remaining term as his or her predecessor. If there are no directors in office, then an election of directors may be held in the manner provided by statute.

Section 3.04. Regular Meetings. Regular meetings of the board of directors may be held at any time or date and at any place within or without the State of Delaware which has been designated by the board of directors and publicized among all directors, either orally or in writing, by telephone, including a voice-messaging system or other system designed to record and communicate messages, facsimile, telegraph or telex, or by electronic mail or other electronic means. No further notice shall be required for regular meetings of the board of directors.

Section 3.05. Special Meetings. Special meetings of the board of directors may be called by or at the request of the chairman of the board, the vice chairman of the board, the chief executive officer, the president or a majority of the authorized number of directors. The person or persons authorized to call special meetings of the board of directors may fix any place, either within or without the state of incorporation, as the place for holding any special meeting of the board of directors called by them.

Section 3.06. Meetings by Telephone Conference Call. Any member of the board of directors, or of any committee thereof, may participate in a meeting by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting.

Section 3.07. Notice.

(a) Notice of the time and place of all special meetings of the board of directors shall be orally or in writing, by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, facsimile, telegraph or telex, or by electronic mail or other electronic means, during normal business hours, at least twenty-four (24) hours before the date and time of the meeting. If notice is sent by US mail, it shall be sent by first class mail, charges prepaid, at least three (3) days before the date of the meeting. Notice of any meeting may be waived in writing, or by electronic transmission, at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

(b) The transaction of all business at any meeting of the board of directors, or any committee thereof, however called or noticed, or wherever held, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present and if, either before or after the meeting, each of the directors not present who did not receive notice shall sign a written waiver of notice or shall waive notice by electronic transmission. All such waivers shall be filed with the corporate records or made a part of the minutes of the meeting.

Section 3.08. Quorum. Unless the certificate of incorporation or statute requires a greater number, and except with respect to questions related to indemnification arising under Article 8 for which a quorum shall be one-third of the exact number of directors fixed from time to time, a quorum of the board of directors shall consist of a majority of the exact number of directors fixed from time to time by the board of directors in accordance with the certificate of incorporation; provided, however, at any meeting whether a quorum be present or otherwise, a majority of the directors present may adjourn from time to time until the time fixed for the next regular meeting of the board of directors, without notice other than by announcement at the meeting.

Section 3.09. Manner of Acting. At each meeting of the board of directors at which a quorum is present, all questions and business shall be determined by the affirmative vote of a majority of the directors present, unless a different vote be required by law, the certificate of incorporation or these bylaws.

Section 3.10. Compensation. By resolution of the board of directors, the directors may be paid their expenses, if any, of attendance at each meeting of the board of directors, and may be paid a fixed sum for attendance at each meeting of the board of directors or a stated salary as director. No such payment shall preclude any director from serving the corporation in any other capacity and receiving compensation therefore.

Section 3.11. Presumption of Assent. A director of the corporation who is present at a meeting of the board of directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless (i) such director's dissent or abstention therefrom shall be entered into the minutes of the meeting, (ii) such director shall file a written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof, or (iii) such director shall forward such dissent by registered or certified mail, postage pre-paid, with return receipt requested to the secretary of the corporation not later than the first business day following the adjournment of the meeting. Such right to dissent shall not apply to a director who abstained or voted in favor of such action.

Section 3.12. Resignations. Any director may resign at any time by delivering his or her notice in writing or by electronic transmission to either the chief executive officer, president, a vice president, the secretary, or assistant secretary if any. The resignation shall become effective on giving of such notice, unless such notice specifies a later time for the effectiveness of such resignation.

Section 3.13. Written Consent to Action by Directors. Unless otherwise restricted by the certificate of incorporation or these bylaws, any action required or permitted to be taken at any meeting of the board of directors or of any committee thereof may be taken without a meeting, if all members of the board of directors or committee, as the case may be, consent thereto in writing or by electronic transmission, and such writing or writings or transmission or transmissions are filed with the minutes of proceedings of the board of directors or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 3.14. Removal. Subject to any limitations imposed by law, the board of directors or any director may be removed from office at any time (i) with cause by the affirmative vote of the holders of a majority of the voting power of all then-outstanding shares of capital stock of the corporation entitled to vote generally at an election of directors or (ii) without cause by the affirmative vote of the holders of at least sixty-six and two-thirds percent (66 2/3%) of the voting power of all then-outstanding shares of capital stock of the corporation entitled to vote generally at an election of directors.

#### ARTICLE IV OFFICERS

Section 4.01. Number. The officers of the corporation shall be chosen by the board of directors and shall be at least a chief executive officer, chief financial officer and a secretary. The board of directors may elect from among its members a chairman of the board and a vice chairman. The board of directors may also choose a president, chief operating officer, treasurer and controller or one or more vice-presidents, assistant secretaries, assistant controllers and assistant treasurers.

Section 4.02. Election, Term of Office and Qualifications. The board of directors at its first meeting after each annual meeting of stockholders shall choose a chief executive officer, chief financial officer and a secretary and may also choose a president, chief operating officer, treasurer, controller, vice presidents, assistant secretaries, assistant controllers or assistant treasurers. In the event of failure to choose officers at an annual meeting of the board of directors, officers may be chosen at any regular or special meeting of the board of directors. Each such officer (whether chosen at an annual meeting of the board of directors to fill a vacancy or otherwise) shall hold his office until the next ensuing annual meeting of the board of directors, and until his successor shall have been chosen and qualified, or until his death or until his resignation or removal in the manner provided in these bylaws. Any number of offices may be held by the same person, unless the certificate of incorporation or these bylaws otherwise provide.

Section 4.03. Subordinate Officers, Etc. The board of directors may appoint such other officers and agents as it shall deem necessary, who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the board.

Section 4.04. Resignations. Any officer may resign at any time by giving notice in writing or by electronic transmission to the board of directors or to the chief executive officer, the president or to the secretary. Any such resignation shall be effective when received by the person or persons to whom such notice is given, unless a later time is specified therein, in which event the resignation shall become effective at such later time. Unless otherwise specified in such notice, the acceptance of any such resignation shall not be necessary to make it effective. Any resignation shall be without prejudice to the rights, if any, of the corporation under any contract with the resigning officer.

Section 4.05. Removal. Any officer may be removed from office at any time, either with or without cause, by the affirmative vote of a majority of the directors in office at the time, or by the unanimous written consent of the directors in office at the time, or by any committee or by the chief executive officer or by other superior officers upon whom such power of removal may have been conferred by the board of directors.

Section 4.06. Vacancies and Newly Created Offices. If any vacancy shall occur in any office by reason of death, resignation, removal, disqualification, or any other cause, or if a new office shall be created, then such vacancies or newly created offices may be filled by the board of directors at any regular or special meeting.

Section 4.07. The Executive Chairman of the Board. The executive chairman of the board shall be deemed to be a senior executive officer of the corporation and have the following powers and duties:

(a) He/she shall preside at all stockholders' meetings;

(b) He/she shall preside at all meetings of the board of directors;

(c) He/she shall be a member of the executive committee, if any; and

(d) Subject to final approval by the board of directors, he/she shall establish and guide the essential policies and direction of the corporation, including (i) facilitating and negotiating of strategic acquisitions, (ii) the structuring and negotiation of the terms of one or more financings for the corporation or its subsidiaries, and (iii) together with the chief executive officer or president, serving as the spokesperson for the corporation.

Section 4.08. The Chief Executive Officer and President. The chief executive officer shall be the president of the corporation unless such title is assigned to another officer of the corporation; and in the absence of the executive chairman of the board and the vice chairman of the board, he/she shall preside at all meetings of the stockholders and the board of directors; he/she shall have general and active management of the business of the corporation and shall see that all orders and resolutions of the board of directors are carried into effect.

In the absence of the chief executive officer or in the event of his/her inability or refusal to act, the president, if any, shall perform the duties of the chief executive officer, and when so acting, shall have all the powers of and be subject to all the restrictions upon the chief executive officer. The president shall perform such other duties and have such other powers as the board of directors may from time to time prescribe.

The chief executive officer, president or any vice president shall execute bonds, mortgages and other contracts requiring a seal, under the seal of the corporation, except where required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the board of directors to some other officer or agent of the corporation.

Section 4.09. The Vice Presidents. In the absence of the president or in the event of his/her inability or refusal to act, the vice-president, if any, (or in the event there be more than one vice-president, the vice-presidents in the order designated by the directors, or in the absence of any designation, then in the order of their election) shall perform the duties of the president, and when so acting, shall have all the powers of and be subject to all the restrictions upon the president. The vice-presidents shall perform such other duties and have such other powers as the board of directors may from time to time prescribe.

Section 4.10. The Secretary.

(a) The secretary or his or her designee shall attend all meetings of the board of directors and all meetings of the stockholders and record all the proceedings of the meetings of the corporation and of the board of directors and shall cause such records to be kept in a book kept for that purpose and shall perform like duties for the standing committees when required. He/she shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the board of directors, and shall perform such other duties as may be prescribed by the board of directors or chief executive officer, under whose supervision he/she shall be. He/she shall have custody of the corporate seal of the corporation and he/she, or an assistant secretary, shall have authority to affix the same to any instrument requiring it and when so affixed, it may be attested by his/her signature or by the signature of such assistant secretary. The board of directors may give general authority to any other officer to affix the seal of the corporation and to attest the affixing by his/her signature.

(b) The assistant secretary, or if there be more than one, the assistant secretaries in the order determined by the board of directors (or if there be no such determination, then in the order of their election) shall, in the absence of the secretary or in the event of his/her inability or refusal to act, perform the duties and exercise the powers of the secretary and shall perform such other duties and have such other powers as the board of directors may from time to time prescribe.

Section 4.11. The Chief Financial Officer.

(a) The chief financial officer shall be the chief financial officer and treasurer of the corporation and shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the corporation in such depositories as may be designated by the board of directors.

(b) He/she shall disburse the funds of the corporation as may be ordered by the board of directors, taking proper vouchers for such disbursements, and shall render to the chief executive officer and the board of directors, at its regular meetings, or when the board of directors so requires, an account of all his/her transactions as treasurer and of the financial condition of the corporation.

(c) Along with the chief executive officer, president or any vice president, he/she shall be authorized to execute bonds, mortgages and other contracts requiring a seal, under the seal of the corporation, except where required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the board of directors to some other officer or agent of the corporation.

(d) If required by the board of directors, he/she shall give the corporation a bond (which shall be renewed every six years) in such sum and with such surety or sureties as shall be satisfactory to the board of directors for the faithful performance of the duties of his/her office and for the restoration to the corporation, in case of his/her death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his/her possession or under his/her control belonging to the corporation.

(e) The controller shall, in the absence of the chief financial officer or in the event of his/her inability or refusal to act, perform the duties and exercise the powers of the chief financial officer and shall perform such other duties and have such other powers as the board of directors may from time to time prescribe.

(f) Notwithstanding anything herein to the contrary, the board of directors shall be entitled to assign the title of treasurer to an officer of the corporation other than the chief financial officer, in which case the treasurer shall perform such duties and have such powers (which may include some or all of the duties and powers enumerated above for the chief financial officer) as the board of directors may from time to time prescribe.

Section 4.12. Salaries. The salaries and other compensation of the officers of the corporation shall be fixed by or in the manner designated by the board of directors.

Section 4.13. Surety Bonds. In the case the board of directors shall so require, any officer or agent of the corporation shall execute to the corporation a bond in such sums and with such surety or sureties as the board of directors may direct, conditioned on the faithful performance of his duties to the corporation, including responsibility for negligence and for the accounting of all property, monies, or securities of the corporation which may come into his hands.

#### ARTICLE V EXECUTION OF CORPORATE INSTRUMENTS, BORROWING OF MONEY AND DESPOSIT OF CORPORATE FUNDS

Section 5.01. Execution of Instruments. Subject to any limitation contained in the certificate of incorporation or these bylaws, the chief executive officer, president or any vice president, if any, may in the name and on behalf of the corporation, execute and delivery any contract, or other instrument authorized in writing by the board of directors. The board of directors may, subject to any limitation contained in the certificate of incorporation or in these bylaws, authorize in writing any officer or agent to execute and deliver any contract or other instrument in the name of and on behalf of the corporation; any such authorization may be general or confined to specific instances.

Section 5.02. Loans. No loan or advance shall be contracted on behalf of the corporation, no negotiable paper or other evidence of its obligation under any loan or advance shall be issued in its name, and no property of the corporation shall be mortgaged, pledged, hypothecated, transferred, or conveyed as security for the payment of any loan, advance, indebtedness or liability of the corporation, unless and except as authorized by the board of directors. Any such authorization may be general or confined to specific instances.

Section 5.03. Deposits. All monies of the corporation not otherwise employed shall be deposited from time to time to its credit in such banks or trust companies or with such bankers or other depositories as the board of directors may select, or as from time to time may be selected by any officer or agent authorized to do so by the board of directors.

Section 5.04. Checks, Drafts, Etc. All notes, drafts, acceptances, checks, endorsements, and, subject to the provisions of these bylaws, evidences of indebtedness of the corporation shall be signed by such officer or officers or such agent or agents of the corporation and in such manner as the board of directors from time to time may determine. Endorsements for deposit to the credit of the corporation in any of its duly authorized depositories shall be in such manner as the board of directors from time to time may determine.

Section 5.05. Bonds and Debentures. Every bond or debenture issued by the corporation shall be evidenced by an appropriate instrument which shall be signed by the chief executive officer, president or a vice president and by the secretary and sealed with the seal of the corporation. The seal may be a facsimile, engraved or printed. Where such bond or debenture is authenticated with the manual signature of an authorized officer of the corporation or other trustee designated by the indenture of trust or other agreement under which such security is issued, the signature of any of the corporation's officer named thereon may be a facsimile. In case any officer who signed, or whose facsimile signature has been used on any such bond or debenture, shall cease to be an officer of the corporation for any reason before the same has been delivered by the corporation, such bond or debenture may nevertheless be adopted by the corporation and issued and delivered as though the person who signed it or whose facsimile signature has been used thereon has not ceased to be such an officer.

Section 5.06. Sale, Transfer, Etc. of Securities. Sales, transfers, endorsements, and assignments of stocks, bonds and other securities owned by or standing in the name of the corporation, and the execution and delivery on behalf of the corporation of any and all instruments in writing incident to any such sale, transfer, endorsement, or assignment, shall be effected by the chief executive officer, president, or by any vice president, together with the secretary, or by any officer or agent authorized to do so by the board of directors.

Section 5.07. Proxies. Proxies to vote with respect to stock of other corporations owned by or standing in the name of the corporation shall be executed and delivered on behalf of the corporation by the chief executive officer, president or any vice president and the secretary of the corporation, or by any officer or agent authorized to do so by the board of directors.

## ARTICLE VI CAPITAL STOCK

Section 6.01. Stock Certificates. Every holder of stock in the corporation shall be entitled to have a certificate, signed by, or in the name of the corporation by, (i) the chief executive officer, the president, or a vice-president and (ii) the chief financial officer or an assistant chief financial officer, or the secretary or an assistant secretary of the corporation, certifying the number of shares owned by such holder in the corporation. Certificates may be issued for partly paid shares and in such case upon the face or back of the certificates issued to represent any such partly paid shares, the total amount of the consideration to be paid therefor, and the amount paid thereon shall be specified. If the corporation shall be authorized to issue more than one class of stock or more than one series of any class, the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualification, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate that the corporation shall issue to represent such class or series of stock, provided that, except as otherwise provided in Delaware General Corporation Law, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate that the corporation shall issue to represent such class or series of stock, a statement that the corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Any of or all the signatures on the certificate may be facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if he/she were such officer, transfer agent or registrar at the date of issue.

Section 6.02. Transfer of Stock. Upon surrender to the corporation or the transfer agent of the corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignation or authority to transfer, it shall be the duty of the corporation to issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books. The corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and to hold liable for calls and assessments a person registered on its books as the owner of shares and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

Section 6.03. Regulations. Subject to the provision of Article IV, the board of directors may make such rules and regulations as it may deem expedient concerning the issuance, transfer, redemption and registration of certificates for stock of the corporation.

Section 6.04. Maintenance of Stock Ledger at Principal Place of Business. A stock ledger (or ledgers where more than one kind, class, or series of stock is outstanding) shall be kept at the principal place of business of the corporation, or at such other place as the board of directors shall determine, containing the names alphabetically arranged of original stockholders of the corporation, their addresses, their interest, the amount paid on their shares, and all transfer thereof and the number and class of stock held by each. Such stock ledgers shall at all reasonable hours be subject to inspection by persons entitled by law to inspect the same.

Section 6.05. Transfer Agents and Registrars. The board of directors may appoint one or more transfer agents and one or more registrars with respect to the certificates representing stock of the corporation, and may require all such certificates to bear the signature of either or both. The board of directors may from time to time define the respective duties of such transfer agents and registrar. No certificate for stock shall be valid until countersigned by a transfer agent, if at the date appearing thereon the corporation had a transfer agent for such stock, and until registered by a registrar, if at such date the corporation had a registrar for such stock.

Section 6.06. Lost or Destroyed Certificates. The corporation may issue a new certificate for stock of the corporation in place of any certificate theretofore issued by it, alleged to have been lost or destroyed, and the board of directors may, in their discretion, require the owner of the lost or destroyed certificate or his legal representatives, to give the corporation a bond in such form and amount as the board of directors may direct, and with such surety or sureties as may be satisfactory to the board, to indemnify the corporation and its transfer agents and registrars, if any, against any claims that may be made against it or any such transfer agent or registrar on account of the issuance of such new certificate. A new certificate may be issued without requiring any bond when, in the judgment of the board of directors, it is proper to do so.

## ARTICLE VII INSURANCE AND OFFICER AND DIRECTOR CONTRACTS

Section 7.01. Indemnification: Third Party Actions. The corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation), by reason of the fact that he or she is or was a director or officer of the corporation (and, in the discretion of the board of directors, may so indemnify a person by reason of the fact that he is or was an employee, or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise), against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

Section 7.02. Indemnification: Corporate Actions. The corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director or officer of the corporation (and, in the discretion of the board of directors, may so indemnify a person by reason of the fact that he is or was an employee or agent of another corporation, partnership, joint venture, trust or other enterprise), against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

Section 7.03. Determination. To the extent that a present or former director or officer of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Sections 8.01 and 8.02 hereof, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith. Any other indemnification under Sections 8.01 and 8.02 hereof, unless ordered by a court, shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the present or former director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in Sections 8.01 and 8.02 hereof. Such determination shall be made, with respect to a person who is a director or officer at the time of such determination, (i) by a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, or (ii) by a committee of such directors designated by majority vote of such directors, even though less than a quorum, or (iii) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion, or (iv) by the stockholders.

Section 7.04. Advances. Expenses (including attorneys' fees) incurred by an officer or director in defending any civil, criminal, administrative or investigative action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the corporation as authorized in this section. Such expenses (including attorneys' fees) incurred by former directors and officers or other employees and agents may be so paid upon such terms and conditions, if any, as the corporation deems appropriate.

Section 7.05. Scope of Indemnification. The indemnification and advancement of expenses provided by, or granted pursuant to, Sections 8.01, 8.02 and 8.04:

(a) Shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office; and

(b) In accordance with the Delaware General Corporation Law, the right to indemnification or to advancement of expenses arising under a provision of the certificate of incorporation or a bylaw shall not be eliminated or impaired by an amendment to such provision after the occurrence of the act or omission that is the subject of the civil, criminal, administrative or investigative action, suit or proceeding for which indemnification or advancement of expenses is sought, unless the provision in effect at the time of such act or omission explicitly authorizes such elimination or impairment after such action or omission has occurred.

Section 7.06. Insurance. The corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the corporation would have the power to indemnify him against any such liability.

Section 7.07. Officer and Director Contracts. No contract or other transaction between the corporation and one or more of its directors or officers, or between the corporation and any corporation, partnership, association, or other organization in which one or more of the corporation's directors or officers are directors, officers or have a financial interest, is either void or voidable solely on the basis of such relationship or solely because any such director or officer is present at or participates in the meeting of the board of directors or a committee thereof, which authorizes the contract or transaction, or solely because the vote or votes of each director or officer are counted for such purpose if:

(a) The material facts of the relationship or interest are disclosed or known to the board of directors or committee and the board or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested directors even though the disinterested directors be less than a quorum;

(b) The material facts of the relationship or interest is disclosed or known to the stockholders and they approve or ratify the contract or transaction in good faith by a majority vote of the shares voted at a meeting of stockholders called for such purpose or written consent of stockholder holding a majority of the shares entitled to vote (the votes of the common or interested directors or officers shall be counted in any such vote of the stockholders); or

(c) The contract or transaction is fair as to the corporation at the time it is authorized, approved, or ratified by the board of directors, a committee thereof, or the stockholders.

#### ARTICLE VIII FISCAL YEAR

The fiscal year of the corporation shall be fixed by resolution of the board of directors.

#### ARTICLE IX DIVIDENDS

Dividends upon the capital stock of the corporation, subject to the provisions of the certificate of incorporation and applicable law, if any, may be declared by the board of directors pursuant to law at any regular or special meeting. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the certificate of incorporation and applicable law.

Before payment of any dividend, there may be set aside out of any funds of the corporation available for dividends such sum or sums as the board of directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purpose as the board of directors shall think conducive to the interests of the corporation, and the board of directors may modify or abolish any such reserve in the manner in which it was created.

## ARTICLE X NOTICES

Section 10.01. Notice To Stockholders. Written notice to stockholders of stockholder meetings shall be given as provided in Section 2 herein. Without limiting the manner by which notice may otherwise be given effectively to stockholders under any agreement or contract with such stockholder, and except as otherwise required by law, written notice to stockholders for purposes other than stockholder meetings may be sent by US mail or nationally recognized overnight courier, or by facsimile, telegraph or telex or by electronic mail or other electronic means.

Section 10.02. Notice To Directors. Unless otherwise provided in these bylaws, any notice required to be given to any director may be given by the method stated in Section 11.01, or by overnight delivery service, facsimile, telex or telegram, except that such notice other than one which is delivered personally shall be sent to such address as such director shall have filed in writing with the secretary, or, in the absence of such filing, to the last known post office address of such director.

Section 10.03. Affidavit Of Mailing. An affidavit of mailing, executed by a duly authorized and competent employee of the corporation or its transfer agent appointed with respect to the class of stock affected, or other agent, specifying the name and address or the names and addresses of the stockholder or stockholders, or director or directors, to whom any such notice or notices was or were given, and the time and method of giving the same, shall in the absence of fraud, be prima facie evidence of the facts therein contained.

Section 10.04. Methods of Notice. It shall not be necessary that the same method of giving notice be employed in respect of all recipients of notice, but one permissible method may be employed in respect of any one or more, and any other permissible method or methods may be employed in respect of any other or others.

Section 10.05. Notice To Person With Whom Communication Is Unlawful. Whenever notice is required to be given, under any provision of law or of the certificate of incorporation or bylaws of the corporation, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the corporation is such as to require the filing of a certificate under any provision of the Delaware General Corporation Law, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

Section 10.06. Notice to Stockholders Sharing an Address. Except as otherwise prohibited under the Delaware General Corporation Law, any notice given under the provisions of the Delaware General Corporation Law, the certificate of incorporation or the bylaws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. Such consent shall have been deemed to have been given if such stockholder fails to object in writing to the corporation within 60 days of having been given notice by the corporation of its intention to send the single notice. Any consent shall be revocable by the stockholder by written notice to the corporation.

## ARTICLE XI AMENDMENTS

Subject to the limitations set forth in Section 8.05 of these bylaws or the provisions of the certificate of incorporation, the board of directors is expressly empowered to adopt, amend or repeal the bylaws of the corporation. The stockholders also shall have power to adopt, amend or repeal the bylaws of the corporation; provided, however, that, in addition to any vote of the holders of any class or series of stock of the corporation required by law or by the certificate of incorporation, such action by stockholders shall require the affirmative vote of the holders of at least sixty-six and two-thirds percent (66 2/3%) of the voting power of all of the then-outstanding shares of the capital stock of the corporation entitled to vote generally in the election of directors, voting together as a single class.

## ARTICLE XII PRIOR BY-LAWS

These amended and restated By-Laws amend and restate in their entirety the by-laws of the Corporation adopted by the stockholders at a special meeting on December 13, 2016.

Adopted by unanimous vote of holders of a majority of the outstanding voting common stock of the corporation and the board of directors of the corporation at a special joint meeting of majority stockholders and the board held on March 28, 2019.

**HIGHTIMES HOLDING CORP.**  
**2019 EQUITY INCENTIVE PLAN**

**Adopted March 28, 2019**

1. **Purposes of the Plan** The purposes of the **Hightimes Holding Corp. 2019 Equity Incentive Plan** are to attract and retain the best available personnel for positions of substantial responsibility, to provide additional incentive to Employees, Directors, and Consultants, and to promote the success of the Company's business. Options granted under the Plan may be Incentive Stock Options or Non-Qualified Stock Options, as determined by the Administrator at the time of grant. Stock Purchase Rights and Restricted Stock Units may also be granted under the Plan.

2. **Definitions** As used herein, the following definitions shall apply:

(a) "**Administrator**" means the Board or the Committee responsible for conducting the general administration of the Plan, as applicable, in accordance with **Section 4** hereof.

(b) "**Applicable Laws**" means the requirements relating to the administration of stock option plans under U.S. state corporate laws, U.S. federal and state securities laws, the Code, any stock exchange or quotation system on which the Common Stock is listed or quoted, and the applicable laws of any foreign country or jurisdiction where Options, Stock Purchase Rights or Restricted Stock Units are granted under the Plan.

(c) "**Board**" means the Board of Directors of the Company.

(d) "**Change in Control**" shall mean and include each of the following:

(i) a dissolution or liquidation of the Company;

(ii) a merger or consolidation in which the Company is not the surviving corporation (other than a merger or consolidation with a wholly-owned subsidiary, a reincorporation of the Company in a different jurisdiction, or other transaction in which there is no substantial change in the stockholders of the Company or their relative stock holdings and the Options and Stock Purchase Rights granted under this Plan are assumed, converted or replaced by the successor or acquiring corporation, which assumption, conversion or replacement will be binding on all Holders);

(iii) a merger in which the Company is the surviving corporation but after which the stockholders of the Company immediately prior to such Exchange (other than any stockholder which merges with the Company in such merger, or which owns or controls another corporation which merges with the Company in such merger) cease to own at least a majority of the combined voting power of the surviving corporation's outstanding voting securities immediately after the transaction; or

(iv) the sale of all or substantially all of the assets of the Company.

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The Administrator shall have full and final authority, which shall be exercised in its sole discretion, to determine conclusively whether a Change in Control has occurred pursuant to the above definition, and the date of the occurrence of such Change in Control and any incidental matters relating thereto.

(e) “Code” means the Internal Revenue Code of 1986, as amended, or any successor statute or statutes thereto. Reference to any particular Code section shall include any successor section.

(f) “Committee” means a committee appointed by the Board in accordance with Section 4 hereof.

(g) “Common Stock” means the Class A voting common stock of the Company, par value of \$0.0001 per share.

(h) “Company” means **Hightimes Holding Corp.**, a Delaware corporation.

(i) “Consultant” means any consultant or adviser if: (i) the consultant or adviser renders *bona fide* services to the Company or any Parent or Subsidiary of the Company; (ii) the services rendered by the consultant or adviser are not in connection with the offer or sale of securities in a capital-raising transaction and do not directly or indirectly promote or maintain a market for the Company’s securities; and (iii) the consultant or adviser is a natural person.

(j) “Director” means a member of the Board.

(k) “Disability” means total and permanent disability within the meaning of Section 22(e)(3) of the Code.

(l) “Employee” means any person, including an Officer or Director, who is an employee (as defined in accordance with Section 3401(c) of the Code) of the Company or any Parent or Subsidiary of the Company. A Service Provider shall not cease to be an Employee in the case of (i) any leave of absence approved by the Company or (ii) transfers between locations of the Company or between the Company, its Parent, any Subsidiary, or any successor. For purposes of Incentive Stock Options, no such leave may exceed ninety (90) days, unless reemployment upon expiration of such leave is guaranteed by statute or contract. Neither service as a Director nor payment of a director’s fee by the Company shall be sufficient, by itself, to constitute “employment” by the Company.

(m) “Equity Restructuring” shall mean a non-reciprocal transaction between the Company and its stockholders, such as a stock dividend, stock split, spin-off, rights offering, or recapitalization through a large, nonrecurring cash dividend, that affects the shares of Common Stock (or other securities of the Company) or the share price of Common Stock (or other securities) and causes a change in the per share value of the Common Stock underlying outstanding awards granted under the Plan.

(n) “Exchange Act” means the Securities Exchange Act of 1934, as amended, or any successor statute or statutes thereto. Reference to any particular Exchange Act section shall include any successor section.

(o) “Fair Market Value” means, as of any date, the value of a share of Common Stock determined as follows:

(i) If the Common Stock is listed on any established stock exchange or a national market system, its Fair Market Value shall be the closing sales price for a share of such stock (or the closing bid, if no sales were reported) as quoted on such exchange or system for such date, or if no bids or sales were reported for such date, then the closing sales price (or the closing bid, if no sales were reported) on the trading date immediately prior to such date during which a bid or sale occurred, in each case, as reported in *The Wall Street Journal* or such other source as the Administrator deems reliable;

(ii) If the Common Stock is regularly quoted by a recognized securities dealer but selling prices are not reported, its Fair Market Value shall be the mean between the high bid and low asked prices for a share of the Common Stock on such date, or if no closing bid and asked prices were reported for such date, the date immediately prior to such date during which closing bid and asked prices were quoted for such Common Stock, in each case, as reported in *The Wall Street Journal* or such other source as the Administrator deems reliable; or

(iii) In the absence of an established market for the Common Stock, the Fair Market Value thereof shall be determined by the Independent Director, in its reasonable discretion.

(p) “Holder” means a person who has been granted or awarded an Option, Stock Purchase Right or Restricted Stock Unit or who holds Shares acquired pursuant to the exercise of an Option, Stock Purchase Right or Restricted Stock Unit.

(q) “Incentive Stock Option” means an Option intended to qualify as an incentive stock option within the meaning of Section 422 of the Code and which is designated as an Incentive Stock Option by the Administrator.

(r) “Independent Director” means a Director who is not an Employee or a Stockholder of the Company, or appointed by a Stockholder or Employee of the Company or Parent.

(s) “Non-Qualified Stock Option” means an Option (or portion thereof) that is not designated as an Incentive Stock Option by the Administrator, or which is designated as an Incentive Stock Option by the Administrator but fails to qualify as an incentive stock option within the meaning of Section 422 of the Code.

(t) “Officer” means a person who is an officer of the Company within the meaning of Section 16 of the Exchange Act and the rules and regulations promulgated thereunder.

(u) “Option” means a stock option granted pursuant to the Plan and shall mean, collectively, the Incentive Stock Options and Nonqualified Options available for grant and granted pursuant to this Plan.

(v) “Option Agreement” means a written agreement between the Company and a Holder evidencing the terms and conditions of an individual Option grant. The Option Agreement is subject to the terms and conditions of the Plan.

(w) “Parent” means any corporation (or other entity), whether now or hereafter existing (other than the Company), in an unbroken chain of corporations (or other entities) ending with the Company if each of the corporations (or other entities) other than the last corporation (or other entity) in the unbroken chain owns stock (or other equity interests) possessing more than fifty percent (50%) of the total combined voting power of all classes of stock (or other equity interests) in one of the other corporations (or other entities) in such chain.

(x) “Plan” means this **Hightimes Holding Corp., 2017 Equity Incentive Plan**.

(y) “Public Trading Date” means the first date upon which Common Stock of the Company is listed (or approved for listing) upon notice of issuance on any securities exchange or designated (or approved for designation) upon notice of issuance as a national market security on an interdealer quotation system.

(z) “Purchase Agreement” means the amended and restated stock purchase agreement dated February 14, 2017, by and among the Company, Trans-High Corporation (“*Trans-High*”); and the owners of 100% of the capital stock of Trans-High (collectively, the “*Trans-High Equity Owners*”), pursuant to which, *inter alia*, the Company acquired from the Trans-High Equity Owners on the Closing Date 100% of the capital stock of Trans-High.

(aa) “Restricted Stock” means Shares acquired pursuant to the exercise of an unvested Option in accordance with Section 10(h) below or pursuant to a Stock Purchase Right or Restricted Stock Unit granted under Section 12 below.

(bb) “Restricted Stock Purchase Agreement” means a written agreement between the Company and a Holder evidencing the terms and conditions of the Holder’s purchase of Restricted Stock pursuant to the exercise of an unvested Option in accordance with Section 10(h) below or a Stock Purchase Right granted under Section 12 below.

(cc) “Rule 16b-3” means that certain Rule 16b-3 under the Exchange Act, as such Rule may be amended from time to time.

(dd) “Section 16(b)” means Section 16(b) of the Exchange Act, as such Section may be amended from time to time.

(ee) “Securities Act” means the Securities Act of 1933, as amended, or any successor statute or statutes thereto. Reference to any particular Securities Act section shall include any successor section.

(ff) “Service Provider” means an Employee, Director, or Consultant.

(gg) “Share” means a share of Common Stock, as adjusted in accordance with Section 13 below.

(hh) “Stock Purchase Right” means a right to purchase Common Stock pursuant to Section 12 below.

(ii) “Subsidiary” means any corporation (or other entity), whether now or hereafter existing (other than the Company), in an unbroken chain of corporations (or other entities) beginning with the Company if each of the corporations (or other entities) other than the last corporation (or other entity) in the unbroken chain owns stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock in one of the other corporations (or other entities) in such chain.

3. **Stock Subject to the Plan**. Subject to the provisions of Section 13 hereof, the shares of stock subject to Options, Stock Purchase Rights or Restricted Stock Units shall be Common Stock. Subject to the provisions of Section 13 hereof, the maximum aggregate number of Shares which may be issued upon exercise of such Options, Stock Purchase Rights and Restricted Stock Units is Six Million (6,000,000) Shares of Company Common Stock. Shares issued upon exercise of Options, Stock Purchase Rights or Restricted Stock Units may be authorized but unissued, or reacquired Common Stock. If an Option, Stock Purchase Right or Restricted Stock Unit expires or becomes unexercisable without having been exercised in full, the unpurchased Shares which were subject thereto shall become available for future grant or sale under the Plan (unless the Plan has terminated). Shares which are delivered by the Holder or withheld by the Company upon the exercise of an Option, Stock Purchase Right or Restricted Stock Unit under the Plan, in payment of the exercise price thereof or tax withholding thereon, may again be optioned, granted, or awarded hereunder, subject to the limitations of this Section 3. If Shares of Restricted Stock are repurchased by the Company at their original purchase price, such Shares shall become available for future grant under the Plan (unless the Plan has terminated). Notwithstanding the provisions of this Section 3, no Shares may again be optioned, granted, or awarded if such action would cause an Incentive Stock Option to fail to qualify as an Incentive Stock Option under Code Section 422.

#### 4. Administration of the Plan.

(a) Administrator. Unless and until the Board delegates administration to a Committee as set forth below, the Plan shall be administered by the Board. The Board may delegate administration of the Plan to a Committee or Committees of one (1) or more members of the Board, and the term "Committee" shall apply to any person or persons to whom such authority has been delegated. If administration is delegated to a Committee, the Committee shall have, in connection with the administration of the Plan, the powers theretofore possessed by the Board, including the power to delegate to a subcommittee any of the administrative powers the Committee is authorized to exercise (and references in the Plan to the Board shall thereafter be to the Committee or subcommittee), subject, however, to such resolutions, not inconsistent with the provisions of the Plan, as may be adopted from time to time by the Board. Notwithstanding the foregoing, however, unless otherwise determined by the Board, from and after the Public Trading Date, a Committee of the Board shall administer the Plan and the Committee shall consist solely of two (2) or more Independent Directors each of whom is an "outside director," within the meaning of Section 162(m) of the Code, a "non-employee director" within the meaning of Rule 16b-3, and qualifies as "independent" within the meaning of any applicable stock exchange listing requirements. Members of the Committee shall also satisfy any other legal requirements applicable to membership on the Committee, including requirements under the Sarbanes-Oxley Act of 2002 and other Applicable Laws. Within the scope of its authority, in the absence of Independent Directors or otherwise, the Board or the Committee may (i) delegate to a committee of one (1) or more members of the Board who are not Independent Directors the authority to grant awards under the Plan to eligible persons who are either (1) not then "covered employees," within the meaning of Section 162(m) of the Code and are not expected to be "covered employees" at the time of recognition of income resulting from such award or (2) not persons with respect to whom the Company wishes to comply with Section 162(m) of the Code and/or (ii) delegate to a committee of one (1) or more members of the Board who are not "non-employee directors," within the meaning of Rule 16b-3, the authority to grant awards under the Plan to eligible persons who are not then subject to Section 16 of the Exchange Act. The Board may abolish the Committee at any time and revert in the Board the administration of the Plan. Appointment of Committee members shall be effective upon acceptance of appointment. Committee members may resign at any time by delivering written notice to the Board. Vacancies in the Committee may only be filled by the Board.

(b) Powers of the Administrator. Subject to the provisions of the Plan and the specific duties delegated by the Board to such Committee, and subject to the approval of any relevant authorities, the Administrator shall have the authority in its good faith, sole discretion:

(i) to determine the Fair Market Value;

(ii) to select the Service Providers to whom Options and Stock Purchase Rights may from time to time be granted hereunder;

(iii) to determine the number of Shares to be covered by each such award granted hereunder;

(iv) to approve forms of agreement for use under the Plan;

(v) to determine the terms and conditions of any Option, Stock Purchase Right or Restricted Stock Unit granted hereunder (such terms and conditions include, but are not limited to, the exercise price, the time or times when Options, Stock Purchase Rights or Restricted Stock Units may vest or be exercised (which may be based on performance criteria), any vesting acceleration or waiver of forfeiture restrictions, and any restriction or limitation regarding any Option, Stock Purchase Right or Restricted Stock Unit or the Common Stock relating thereto, based in each case on such factors as the Administrator, in its sole discretion, shall determine);

(vi) to determine whether to offer to buyout a previously granted Option as provided in Section 10(i) hereof and to determine the terms and conditions of such offer and buyout (including whether payment is to be made in cash or Shares);

(vii) to prescribe, amend, and rescind rules and regulations relating to the Plan, including rules and regulations relating to sub-plans established for the purpose of qualifying for preferred tax treatment under foreign tax laws;

(viii) to allow Holders to satisfy withholding tax obligations by electing to have the Company withhold from the Shares to be issued upon exercise of an Option, Stock Purchase Right or Restricted Stock Unit that number of Shares having a Fair Market Value equal to the minimum amount required to be withheld based on the statutory withholding rates for federal and state tax purposes that apply to supplemental taxable income. The Fair Market Value of the Shares to be withheld shall be determined on the date that the amount of tax to be withheld is to be determined. All elections by Holders to have Shares withheld for this purpose shall be made in such form and under such conditions as the Administrator may deem necessary or advisable;

(ix) to amend the Plan or any Option, Stock Purchase Right or Restricted Stock Unit granted under the Plan, subject to the terms of Section 15 hereof (including, without limitation, any approvals required by any Holder of Options, Stock Purchase Rights, or Restricted Stock) and the terms of any award agreement; and

(x) to construe and interpret the terms of the Plan and awards granted pursuant to the Plan and to exercise such powers and perform such acts as the Administrator deems necessary or desirable to promote the best interests of the Company which are not in conflict with the express written provisions of the Plan.

(c) Effect of Administrator's Decision. All decisions, determinations, and interpretations of the Administrator shall be final and binding on all Holders.

5. Eligibility. Non-Qualified Stock Options and Stock Purchase Rights may be granted to Service Providers. Incentive Stock Options may be granted only to Employees of the Company (or a "parent corporation" or "subsidiary corporation" thereof within the meaning of Code Sections 424(e) or 424(f), respectively). If otherwise eligible, a Service Provider who has been granted an Option, Stock Purchase Right or Restricted Stock Unit may be granted additional Options, Stock Purchase Rights or Restricted Stock Units.

#### 6. Limitations.

(a) Designations. Each Option shall be designated by the Administrator in the Option Agreement as either an Incentive Stock Option or a Non-Qualified Stock Option. However, notwithstanding such designations, to the extent that the aggregate Fair Market Value of Shares subject to a Holder's Incentive Stock Options and other incentive stock options granted by the Company (or a "parent corporation" or "subsidiary corporation" thereof within the meaning of Code Sections 424(e) or 424(f), respectively), which become exercisable for the first time during any calendar year (under all plans of the Company or any such parent or subsidiary) exceeds one hundred thousand dollars (\$100,000), such excess Options or other options shall be treated as Non-Qualified Stock Options. If the Code is amended to provide for a different limitation from that set forth in the preceding sentence, such different limitation shall be deemed incorporated herein effective as of the date and with respect to such Options as required or permitted by such amendment to the Code.

For purposes of this Section 6(a), Incentive Stock Options shall be taken into account in the order in which they were granted, and the Fair Market Value of the Shares shall be determined as of the time of grant.

(b) Employment or Consulting Relationship at Will. Neither the Plan, any Option, nor any Stock Purchase Right shall confer upon a Holder any right with respect to continuing the Holder's employment or consulting relationship with the Company, nor shall they interfere in any way with the Holder's right or the Company's right to terminate such employment or consulting relationship at any time, with or without cause, in accordance with the applicable employment or consulting agreement, if any.

(c) Options, Stock Purchase Rights or Restricted Stock Units Granted. No Service Provider shall be granted, in any calendar year, Options, Stock Purchase Rights or Restricted Stock Units to purchase more than Six Hundred and Fifty Thousand (650,000) Shares of Company Common Stock; provided, however, that the foregoing limitation shall not apply prior to the Public Trading Date, and, following the Public Trading Date, the foregoing limitation shall not apply until the earliest of: (i) the first material modification of the Plan (including any increase in the number of shares reserved for issuance under the Plan in accordance with Section 3 hereof); (ii) the first meeting of stockholders at which Directors of the Company are to be elected that occurs after the close of the third calendar year following the calendar year in which occurred the first registration of an equity security of the Company under Section 12 of the Exchange Act; or (iii) such other date required by Section 162(m) of the Code and the rules and regulations promulgated thereunder. The foregoing limitation shall be adjusted proportionately in connection with any change in the Company's capitalization as described in Section 13 hereof. For purposes of this Section 6(c), if an Option is canceled in the same calendar year it was granted (other than in connection with a transaction described in Section 13 hereof), the canceled Option will be counted against the limit set forth in this Section 6(c) unless otherwise provided in the Option Agreement. For this purpose, if the exercise price of an Option is reduced, the transaction shall be treated as a cancellation of the Option and the grant of a new Option.

(d) Limitations on Total Outstanding Issuances. The Administrator shall not issue Options, Stock Purchase Rights or Restricted Stock Units which, when combined and aggregated with all other issued and outstanding Options, Stock Purchase Rights or Restricted Stock Units, would result in all such issued and outstanding Options and Stock Purchase Rights representing, in the aggregate, no more than twelve and a half percent (12.5%) of the total number of issued and outstanding Shares of the Company, as calculated on a fully-diluted basis.

7. Term of Plan. The Plan shall become effective upon its initial adoption by the Board and the holders of a majority of the voting capital stock of the Company and shall continue in effect until it is terminated under Section 15 hereof. No Options, Stock Purchase Rights or Restricted Stock Units may be issued under the Plan after the tenth (10th) anniversary of the earlier of (a) the date upon which the Plan is adopted by the Board or (b) the date the Plan is approved by the stockholders.

8. **Term of Option.** The term of each Option shall be stated in the Option Agreement; provided, however, that the term shall be no more than ten (10) years from the date of grant thereof. In the case of an Incentive Stock Option granted to a Holder who, at the time the Option is granted, owns (or is treated as owning under Code Section 424) stock representing more than ten percent (10%) of the voting power of all classes of stock of the Company (or a "parent corporation" or "subsidiary corporation" thereof within the meaning of Code Sections 424(e) or 424(f), respectively), the term of the Option shall be five (5) years from the date of grant or such shorter term as may be provided in the Option Agreement.

**9. Option Exercise Price and Consideration.**

(a) **Per Share Exercise Price.** Except as provided in Section 13 hereof, the per share exercise price for the Shares to be issued upon exercise of an Option shall be such price as is determined by the Administrator, but shall be subject to the following:

(i) In the case of an Incentive Stock Option:

(A) granted to an Employee who, at the time of grant of such Option, owns (or is treated as owning under Code Section 424) stock representing more than ten percent (10%) of the voting power of all classes of stock of the Company (or a "parent corporation" or "subsidiary corporation" thereof within the meaning of Code Sections 424(e) or 424(f), respectively), the per Share exercise price shall be no less than one hundred ten percent (110%) of the Fair Market Value per Share on the date of grant.

(B) granted to any other Employee, the per Share exercise price shall be no less than one hundred percent (100%) of the Fair Market Value per Share on the date of grant.

(ii) In the case of a Non-Qualified Stock Option, the per Share exercise price shall be no less than one hundred percent (100%) of the Fair Market Value per Share on the date of grant.

(iii) Notwithstanding the foregoing, an Option may be granted with a per Share exercise price other than as required above if such Option is granted as an assumption of or in substitution for another option in connection with an Exchange or other corporate transaction.

(b) **Consideration.** The consideration to be paid for the Shares to be issued upon exercise of an Option, including the method of payment, shall be determined by the Administrator (and, in the case of an Incentive Stock Option, shall be determined at the time of grant). Such consideration may consist of (1) cash; (2) check; (3) with the consent of the Administrator, a full recourse promissory note bearing interest (at no less than such rate as is a market rate of interest and which then precludes the imputation of interest under the Code), payable upon such terms as may be prescribed by the Administrator, and structured to comply with Applicable Laws; (4) with the consent of the Administrator, other Shares which have a Fair Market Value on the date of surrender equal to the aggregate exercise price of the Shares as to which such Option shall be exercised; (5) with the consent of the Administrator, surrendered Shares then issuable upon exercise of the Option having a Fair Market Value on the date of exercise equal to the aggregate exercise price of the Option or exercised portion thereof; (6) with the consent of the Administrator, property of any kind which constitutes good and valuable consideration; (7) with the consent of the Administrator, applicable "cashless" exercise provisions to be included in one or more Option Agreements, or (8) with the consent of the Administrator, delivery of a notice that the Holder has placed a market sell order with a broker with respect to Shares then issuable upon exercise of the Options and that the broker has been directed to pay a sufficient portion of the net proceeds of the sale to the Company in satisfaction of the Option exercise price, provided, that payment of such proceeds is then made to the Company upon settlement of such sale; or (8) with the consent of the Administrator, any combination of the foregoing methods of payment.

**10. Exercise of Option.**

(a) Vesting: Fractional Exercises. Except as provided in Section 13(d) hereof, Options granted hereunder shall be vested and exercisable according to the terms hereof at such times and under such conditions as determined by the Administrator and set forth in the Option Agreement. An Option may not be exercised for a fraction of a Share.

(b) Deliveries upon Exercise. All or a portion of an exercisable Option shall be deemed exercised upon delivery of all of the following to the Secretary of the Company, his or her office, or such other authorized representative of the Company:

(i) A written or electronic notice complying with the applicable rules established by the Administrator stating that the Option, or a portion thereof, is exercised. The notice shall be signed or transmitted electronically, as applicable, by the Holder or other person then entitled to exercise the Option or such portion of the Option;

(ii) Such representations and documents as the Administrator, in its good faith, sole discretion, deems necessary or advisable to effect compliance with Applicable Laws. The Administrator may, in its sole discretion, also take whatever additional actions it deems appropriate to effect such compliance, including, without limitation, placing legends on share certificates and issuing stop transfer notices to agents and registrars;

(iii) Upon the exercise of all or a portion of an unvested Option pursuant to Section 10(h) hereof, a Restricted Stock Purchase Agreement in a form determined by the Administrator and signed by the Holder or other person then entitled to exercise the Option or such portion of the Option; and

(iv) In the event that the Option shall be exercised pursuant to Section 10(f) hereof by any person or persons other than the Holder, appropriate proof of the right of such person or persons to exercise the Option.

(c) Conditions to Delivery of Share Certificates. The Company shall not be required to issue or deliver any certificate or certificates for Shares purchased upon the exercise of any Option or portion thereof nor shall the Holder thereof be deemed to be a stockholder of the Company prior to fulfillment of all of the following conditions:

(i) The admission of such Shares to listing on all stock exchanges on which such class of stock is then listed;

(ii) The completion of any registration or other qualification of such Shares under any state or federal law, or under the rulings or regulations of the Securities and Exchange Commission or any other governmental regulatory body which the Administrator shall, in its sole discretion, deem necessary or advisable;

(iii) The obtaining of any approval or other clearance from any state or federal governmental agency which the Administrator shall, in its sole discretion, determine to be necessary or advisable;

(iv) The lapse of such reasonable period of time following the exercise of the Option as the Administrator may establish from time to time for reasons of administrative convenience; and

(v) The receipt by the Company of full payment for such Shares, including payment of any applicable withholding tax, which in the sole discretion of the Administrator may be in the form of consideration used by the Holder to pay for such Shares under Section 9(b) hereof.

(d) Termination of Relationship as a Service Provider. If a Holder ceases to be a Service Provider other than by reason of the Holder's Disability or death, such Holder may exercise his or her Option within such period of time as is specified in the Option Agreement to the extent that the Option is vested on the date of exercise, or as otherwise provided in the Option Agreement; provided, however, that, prior to the Public Trading Date, to the extent required by Applicable Law, such period of time shall not be less than thirty (30) days (but in no event later than the expiration of the term of the Option as set forth in the Option Agreement). In the absence of a specified time in the Option Agreement, the Option shall remain exercisable for three (3) months following the Holder's termination. If, after termination, the Holder does not exercise his or her Option within the time period specified, herein, the Option shall terminate, and the Shares covered by such Option shall again become available for issuance under the Plan.

(e) Disability of Holder. If a Holder ceases to be a Service Provider as a result of the Holder's Disability, the Holder may exercise his or her Option within such period of time as is specified in the Option Agreement to the extent the Option is vested on the date of exercise or as otherwise provided in the Option Agreement; provided, however, that prior to the Public Trading Date, to the extent required by Applicable Law, such period of time shall not be less than six (6) months (but in no event later than the expiration of the term of such Option as set forth in the Option Agreement). In the absence of a specified time in the Option Agreement, the Option shall remain exercisable for twelve (12) months following the Holder's termination. If, after termination, the Holder does not exercise his or her Option within the time specified, herein, the Option shall terminate, and the Shares covered by such Option shall again become available for issuance under the Plan.

(f) Death of Holder. If a Holder dies while a Service Provider, the Option may be exercised within such period of time as is specified in the Option Agreement; provided, however, that prior to the Public Trading Date, to the extent required by Applicable Law, such period of time shall not be less than six (6) months (but in no event later than the expiration of the term of such Option as set forth in the Option Agreement), by the Holder's estate or by a person who acquires the right to exercise the Option by bequest or inheritance, but only to the extent that the Option is vested on the date of exercise. In the absence of a specified time in the Option Agreement, the Option shall remain exercisable for twelve (12) months following the Holder's termination. The Option may be exercised by the executor or administrator of the Holder's estate or, if none, by the person(s) entitled to exercise the Option under the Holder's will or the laws of descent or distribution. If the Option is not so exercised within the time specified, herein, the Option shall terminate, and the Shares covered by such Option shall again become available for issuance under the Plan.

(g) Regulatory Extension. A Holder's Option Agreement may provide that if the exercise of the Option following the termination of the Holder's status as a Service Provider would be prohibited at any time solely because the issuance of shares would violate the registration requirements under the Securities Act, then the Option shall terminate on the earlier of (i) the expiration of the term of the Option set forth in Section 8 hereof or (ii) the expiration of a period of three (3) months after the termination of the Holder's status as a Service Provider during which the exercise of the Option would not be in violation of such registration requirements.

(h) Early Exercisability. The Administrator may provide in the terms of a Holder's Option Agreement that the Holder may, at any time before the Holder's status as a Service Provider terminates, exercise the Option in whole or in part prior to the full vesting of the Option; provided, however, Shares acquired upon exercise of an Option which has not fully vested may be subject to any forfeiture, transfer, or other restrictions as the Administrator may determine in its reasonable discretion or as provided in the Option Agreement.

(i) Buyout Provisions. The Administrator may at any time offer to buyout for a payment in cash or Shares, an Option previously granted, based on such terms and conditions as the Administrator shall establish and communicate to the Holder in writing at the time that such offer is made (provided however that the Holder shall have no obligation to sell such Option unless otherwise provided in the applicable award agreement).

11. Non-Transferability of Options and Stock Purchase Rights. Options and Stock Purchase Rights may not be sold, pledged, assigned, hypothecated, transferred, or disposed of in any manner other than by will or by the laws of descent or distribution and may be exercised, during the lifetime of the Holder, only by the Holder.

## 12. Stock Purchase Rights and Restricted Stock Units

(a) Rights to Purchase. Stock Purchase Rights or Restricted Stock Units may be issued either alone, in addition to, or in tandem with Options granted under the Plan and/or cash awards made outside of the Plan. After the Administrator determines that it will offer Stock Purchase Rights or Restricted Stock Units under the Plan, it shall advise the offeree in writing of any terms, conditions, and/or restrictions related to the offer, including the number of Shares that such person shall be entitled to purchase, the price to be paid, the vesting period for which such Shares shall be subject to the Company's right to repurchase such Shares, and the time within which such person must accept such offer. The offer shall be accepted by execution of a Restricted Stock Purchase Agreement in the form determined by the Administrator.

(b) Repurchase Right. Unless the Administrator determines otherwise, any Restricted Stock Purchase Agreement shall grant the Company the right to repurchase Shares acquired upon exercise of a Stock Purchase Right that remain subject to the Company's repurchase right based upon the vesting schedule determined pursuant to Subsection (a) above upon the termination of the purchaser's status as a Service Provider for any reason. The purchase price for any such Shares repurchased by the Company pursuant to any such repurchase right and the rate at which any such repurchase right shall lapse shall be determined by the Administrator in its sole discretion, and shall be set forth in the Restricted Stock Purchase Agreement.

(c) Other Provisions. Any Restricted Stock Purchase Agreement shall contain such other terms, provisions, and conditions not inconsistent with the Plan as may be determined by the Administrator in its sole discretion.

(d) Rights as a Stockholder. Once the Stock Purchase Right or Restricted Stock Unit is exercised, the purchaser shall have rights equivalent to those of a stockholder and shall be a stockholder when his or her purchase is entered upon the stock records of the Company. No adjustment shall be made for a dividend or other right for which the record date is prior to the date the Stock Purchase Right or Restricted Stock Unit is exercised, except as provided in Section 13 hereof.

### **13. Adjustments upon Changes in Capitalization, Exchange, or Asset Sale**

(a) Adjustments Authorized. In the event that, other than with respect to an Equity Restructuring, any dividend or other distribution (whether in the form of cash, Common Stock, other securities, or other property), reorganization, Exchange, consolidation, combination, repurchase, liquidation, dissolution, or sale, transfer, exchange, or other disposition of all or substantially all of the assets of the Company, or exchange of Common Stock or other securities of the Company, issuance of warrants or other rights to purchase Common Stock or other securities of the Company, or other similar corporate transaction or event, affects the Common Stock such that an adjustment is required in order to prevent dilution or, in the Administrator's good faith, sole discretion, enlargement of the benefits or potential benefits intended by the Company to be made available under the Plan or with respect to any Option, Stock Purchase Right, or Restricted Stock, then the Administrator shall, in such manner as it may deem equitable, adjust any or all of:

(i) the number and kind of shares of Common Stock (or other securities or property) with respect to which Options, Stock Purchase Rights or Restricted Stock Units may be granted or awarded (including, but not limited to, adjustments of the limitations in Section 3 hereof on the maximum number and kind of shares which may be issued and adjustments of the maximum number of Shares that may be purchased by any Holder in any calendar year pursuant to Section 6(c) hereof);

(ii) the number and kind of shares of Common Stock (or other securities or property) subject to outstanding Options, Stock Purchase Rights, or Restricted Stock; and

(iii) the grant or exercise price with respect to any Option, Stock Purchase Right or Restricted Stock Unit.

(b) Adjustment Actions Authorized. In the event of any transaction or event described in Section 13(a) hereof, the Administrator, on such terms and conditions as it deems appropriate, either by the terms of the Option, Stock Purchase Right, or Restricted Stock or by action taken prior to the occurrence of such transaction or event and either automatically or upon the Holder's request, is hereby authorized to take, and shall take as applicable, any one or more of the following actions required in order to prevent dilution or, in the Administrator's good faith, sole discretion, enlargement of the benefits or potential benefits intended by the Company to be made available under the Plan or with respect to any Option, Stock Purchase Right, or Restricted Stock granted or issued under the Plan or to facilitate such transaction or event:

(i) To provide that such Option, Stock Purchase Right, or Restricted Stock be assumed by the successor or survivor corporation, or a parent or subsidiary thereof, or shall be substituted for by substantially similar options, rights, or awards covering the stock of the successor or survivor corporation, or a parent or subsidiary thereof, with appropriate adjustments as to the number and kind of shares and prices; or

(ii) To make adjustments in the number and type of shares of Common Stock (or other securities or property) subject to outstanding Options and Stock Purchase Rights, and/or in the terms and conditions of (including the grant or exercise price), and the criteria included in, outstanding Options, Stock Purchase Rights, or Restricted Stock or Options, Stock Purchase Rights, or Restricted Stock which may be granted in the future; provided however that no such adjustment shall have a material adverse effect.

(c) Proportional Adjustments. In connection with the occurrence of any Equity Restructuring, and notwithstanding anything to the contrary in Section 13(a) and 13(b) hereof:

(i) The number and type of securities subject to each outstanding Option, Stock Purchase Right or Restricted Stock Unit and the exercise price or grant price thereof, if applicable, will be proportionately adjusted. The adjustments provided under this Section 13(c)(i) shall be nondiscretionary and shall be final and binding on the affected Holder and the Company.

(ii) The Administrator shall make such proportionate adjustments, if any, as the Administrator in its reasonable discretion may deem appropriate to reflect such Equity Restructuring with respect to the aggregate number and kind of shares that may be issued under the Plan (including, but not limited to, adjustments of the limitations in Section 3 hereof).

(d) Change in Control. If the Company undergoes a Change in Control, then any surviving corporation or entity or acquiring corporation or entity, or affiliate of such corporation or entity, may assume any Options, Stock Purchase Rights, and/or Restricted Stock outstanding under the Plan or may substitute similar stock awards (including an award to acquire the same consideration paid to the stockholders in the transaction described in this Section 13(d)) for those outstanding under the Plan. In the event any surviving corporation or entity or acquiring corporation or entity in a Change in Control, or affiliate of such corporation or entity, does not assume such Options, Stock Purchase Rights, or Restricted Stock or does not substitute similar stock awards for those outstanding under the Plan, then with respect to (i) Options, Stock Purchase Rights, and Restricted Stock held by participants in the Plan whose status as a Service Provider has not terminated prior to such event, the vesting of such Options, Stock Purchase Rights, and Restricted Stock (and, if applicable, the time during which such awards may be exercised) shall be accelerated and made fully exercisable and all restrictions thereon shall lapse at least ten (10) days prior to the closing of the Change in Control (and the Options, Stock Purchase Rights or Restricted Stock Units terminated if not exercised prior to the closing of such Change in Control) and (ii) any other Options, Stock Purchase Rights or Restricted Stock Units outstanding under the Plan, such Options and Stock Purchase Rights shall be terminated if not exercised prior to the closing of the Change in Control.

(e) No Effect or Restrictions. The existence of the Plan, any Option Agreement or Restricted Stock Purchase Agreement, and the Options, Stock Purchase Rights or Restricted Stock Units granted hereunder shall not affect or restrict in any way the right or power of the Company or the stockholders of the Company to make or authorize any adjustment, recapitalization, reorganization, or other change in the Company's capital structure or its business, any Exchange or consolidation of the Company, any issue of stock or of options, warrants, or rights to purchase stock or of bonds, debentures, preferred, or prior preference stocks whose rights are superior to or affect the Common Stock or the rights thereof or which are convertible into or exchangeable for Common Stock, or the dissolution or liquidation of the Company, or any sale or transfer of all or any part of its assets or business, or any other corporate act or proceeding, whether of a similar character or otherwise.

**14. Time of Granting Options, Stock Purchase Rights and Restricted Stock Units** The date of grant of an Option, Stock Purchase Right or Restricted Stock Unit shall be, for all purposes, the date on which the Administrator makes the determination granting such Option, Stock Purchase Right or Restricted Stock Unit, or such other date as is determined by the Administrator consistent with applicable legal requirements. Notice of the determination shall be given to each Service Provider to whom an Option, Stock Purchase Right or Restricted Stock Unit is so granted in writing within a reasonable time after the date of such grant.

**15. Amendment and Termination of the Plan**

(a) Amendment and Termination: Conflict. Subject to the requirements of subsection (c), the Board may at any time wholly or partially amend, alter, suspend, or terminate the Plan. However, without approval of the Company's stockholders given within twelve (12) months before or after the action by the Board, no action of the Board may, except as provided in Section 13 hereof, increase the limits imposed in Section 3 hereof on the maximum number of Shares which may be issued under the Plan or extend the term of the Plan under Section 7 hereof. Notwithstanding anything to the contrary herein, to the extent that the terms of any award agreement pursuant to this Plan conflict with this Plan, the terms of the award agreement shall govern.

(b) **Stockholder Approval.** The Board shall obtain stockholder approval of any Plan amendment to the extent necessary and desirable to comply with Applicable Laws.

(c) **Effect of Amendment or Termination.** Notwithstanding anything to the contrary contained herein, no amendment, alteration, suspension, or termination of the Plan or any Option, Stock Purchase Right or Restricted Stock Unit shall impair or adversely affect the rights of any Holder, unless mutually agreed otherwise between the Holder and the Administrator, which agreement must be in writing and signed by the Holder and the Company. Termination of the Plan shall not affect the Administrator's ability to exercise the powers granted to it hereunder with respect to Options, Stock Purchase Rights, or Restricted Stock granted or awarded under the Plan prior to the date of such termination.

16. **Inability to Obtain Authority.** The inability of the Company to obtain authority from any regulatory body having jurisdiction, which authority is deemed by the Company's counsel to be necessary to the lawful issuance and sale of any Shares hereunder, shall relieve the Company of any liability in respect of the failure to issue or sell such Shares as to which such requisite authority shall not have been obtained.

17. **Reservation of Shares.** The Company, during the term of the Plan, shall at all times reserve and keep available such number of Shares as shall be sufficient to satisfy the requirements of the Plan.

18. **Intentionally deleted.**

19. **Rules Particular To Specific Countries**

(a) **Generally.** To the extent required by the Company, each Holder agrees that he or she shall enter into an election with the Company or a Subsidiary (in a form approved by the Company) under which any Tax Liability (as defined below) including, but not limited to, National Insurance Contributions ("**NICs**") and any Fringe Benefit Tax ("**FBT**"), is transferred to and met by the Plan participant. For purposes of this **Section 20**, Tax Liability shall mean any and all liability under applicable non-U.S. laws, rules, or regulations, from any income tax, the Company's (or a Subsidiary's) **NICs**, **FBT**, or similar liability, and the Service Provider's **NICs**, **FBT**, or similar liability under applicable non-U.S. law that are attributable to: (A) the grant, vesting, or exercise of, or any other benefit derived by the Plan participant from an Option, Stock Purchase Right, or Restricted Stock; (B) the acquisition by the Plan participant of the Shares on exercise of an Option or the acquisition by the Plan participant of the Shares pursuant to a Stock Purchase Right; or (C) the disposal of any Shares acquired by the Plan participant pursuant to an Option or a Stock Purchase Right granted under the Plan.

(b) **Addendum.** Notwithstanding anything herein to the contrary, the terms and conditions of the Plan with respect to Service Providers who are tax residents of a particular country other than the United States may be subject to an addendum to the Plan in the form of an Appendix. To the extent that the terms and conditions set forth in an Appendix conflict with any provisions of the Plan, the provisions of the Appendix shall govern. The adoption of any such Appendix shall be pursuant to **Section 15** above.

20. **Investment Intent.** The Company may require a Plan participant, as a condition of exercising or acquiring stock under any Option, Stock Purchase Right or Restricted Stock Unit, (i) to give written assurances satisfactory to the Company as to the participant's knowledge and experience in financial and business matters and/or to employ a purchaser representative reasonably satisfactory to the Company who is knowledgeable and experienced in financial and business matters and that he or she is capable of evaluating, alone or together with the purchaser representative, the merits and risks of exercising the Option, Stock Purchase Right or Restricted Stock Unit; and (ii) to give written assurances satisfactory to the Company stating that the participant is acquiring the stock subject to the Option, Stock Purchase Right or Restricted Stock Unit for the participant's own account and not with any present intention of selling or otherwise distributing the stock. The foregoing requirements, and any assurances given pursuant to such requirements, shall be inoperative if (A) the issuance of the shares upon the exercise or acquisition of stock under the applicable Option, Stock Purchase Right or Restricted Stock Unit has been registered under a then currently effective registration statement under the Securities Act or (B) as to any particular requirement, a determination is made by counsel for the Company that such requirement need not be met in the circumstances under then applicable securities laws. The Company may, upon advice of counsel to the Company, place legends on stock certificates issued under the Plan as such counsel deems necessary or appropriate in order to comply with applicable securities laws, including, but not limited to, legends restricting the transfer of the stock.

21. **Section 409A.** To the extent that the Administrator determines that any Option, Stock Purchase Right, or Restricted Stock granted or awarded under the Plan is subject to Section 409A of the Code, the agreement evidencing such Option, Stock Purchase Right, or Restricted Stock shall incorporate the terms and conditions required by Section 409A of the Code. To the extent applicable, the Plan and the agreement evidencing such option, Stock Purchase Right, or Restricted Stock shall be interpreted in accordance with Section 409A of the Code and the Department of Treasury regulations and other interpretive guidance issued thereunder. Notwithstanding any provision of the Plan to the contrary, in the event that the Administrator determines that any Option, Stock Purchase Right, or Restricted Stock may be subject to Section 409A of the Code and related Department of Treasury regulations and other interpretive guidance issued thereunder, the Administrator may adopt such amendments to the Plan and the applicable agreement or adopt other policies and procedures (including amendments, policies, and procedures with retroactive effect), or take any other actions, that the Administrator determines are necessary or appropriate to (a) exempt the Option, Stock Purchase Right, or Restricted Stock from Section 409A of the Code and/or preserve the intended tax treatment of the benefits provided with respect to the Option, Stock Purchase Right, or Restricted Stock, or (b) comply with the requirements of Section 409A of the Code and related Department of Treasury regulations and other interpretive guidance thereunder and thereby avoid the application of any penalty taxes under such Section.

22. **Governing Law.** This Plan shall be governed by and construed in accordance with the laws of the State of Delaware excluding that body of law pertaining to conflicts of law.

23. **Prior Equity Incentive Plan.** This Plan amends and restates in its entirety and supersedes the 2017 Incentive Stock Option Plan dated February 27, 2017 (the "Prior Plan").\* \* \* \* \*

I hereby certify that the Plan was duly adopted by the Board of Directors of Hightimes Holding Corp. on March 28, 2019.

I further certify that the foregoing Plan was approved and ratified by the holders of a majority of the outstanding voting Common Stock of Hightimes Holding Corp. on March 28, 2019.

Executed on this 28<sup>th</sup> day of March 2019

HIGHTIMES HOLDING CORP.

By: /s/ Adam E. Levin

Name: Adam E. Levin

Title: Executive Chairman

**High Times Holding Corporation Names Veteran Media Executive  
Kraig Fox President and Chief Executive Officer**

LOS ANGELES – April 3, 2019 – Hightimes Holding Corporation, the owner of legendary print magazine High Times along with the associated Cannabis Cup Festivals, Dope Magazine, Culture Magazine and Green Rush Daily, today announced the appointment of veteran media and live entertainment executive Kraig Fox as President and Chief Executive Officer. Fox will oversee the company's rapidly expanding portfolio of global media, events and licensed properties. Adam Levin, who has served as High Time's CEO since its acquisition by Hightimes Holding Corp in 2017, will now serve as the company's Executive Chairman.

The announcement of Mr. Fox comes as High Times is raising one of the largest Regulation A+ funding initiatives in cannabis history in preparation for the public listing of its shares, expected later in 2019. The High Times Regulation A+ offering and has already generated more than 20,000 investors.

"Kraig's operating and finance experience with public companies in the live entertainment, music and branding sectors makes him the ideal executive to take the High Times brand, our growing portfolio of assets and our business operations to the next level," said High Times Executive Chairman Adam Levin. "As our operations expand globally, Kraig will provide both the personnel leadership and operational strategy to bring positive returns to those financially invested in the High Times brand. I couldn't be more excited to have Kraig join us."

Fox has already had an esteemed career which includes being part of the founding team and senior executive officer group behind Live Nation, Core Media (American Idol, Elvis Presley, Muhammad Ali) and as Senior Managing Director of Entertainment and Media at Guggenheim Partners and, most recently, Eldridge Industries. Mr. Fox has extensive experience in the public markets arena and in mergers and acquisitions.

"I believe that High Times is the most valuable and recognizable global brand in the cannabis sector and I am thrilled to be leading this rapidly expanding organization," Fox stated. "This is an exciting time for cannabis globally, and I'm thrilled to be at the helm of this portfolio of properties and brands as we continue to expand both organically and through acquisitions."

"As the leading 'non-plant' touching business in the industry, High Times is providing investors with an amazing opportunity to participate in the macro growth of cannabis. We plan on keeping our public offering open for a brief period as we conclude discussions with institutions and other major investors. Both the investor and cannabis communities recognize that High Times is uniquely positioned to empower the industry with positive long-term financial returns."

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Fox joins High Times at a period of rapid expansion, as High Times also owns and operates *The Cannabis Cup*, the world's largest cannabis-themed series of events. Over the past two years, High Times has conducted a series of successful acquisitions, including three high-profile print and online media brands: CULTURE, DOPE Magazine and Green Rush Daily. High Times has also created a music label, a Video-On-Demand platform and successfully completed several licensing deals, as well as the re-release of its debut music record with distribution from retail giant Urban Outfitters. High Times has entered into definitive agreements to acquire The Big Show, a leading US based cannabis conference and exposition and Spanabis, the largest cannabis conference in the world based in Barcelona, Spain.

"Our portfolio of complementary businesses excels at connecting cannabis consumers with a variety of brands," Fox said. "This is a lucrative time for the global cannabis industry, the High Times brand and for all of our company stakeholders."

#### **About High Times**

For more than 44 years High Times has been the world's most well-known cannabis brand - championing the lifestyle and educating the masses on the benefits of this natural flower. From humble beginnings as a counterculture lifestyle publication, High Times has evolved into hosting industry-leading events like the Cannabis Cup and the High Times Business Summits, while providing digital TV and social networks, globally distributed merchandise, international licensing deals, and millions of fans and supporters across the globe. In the world of Cannabis, High Times is the arbiter of quality.

#### **Forward Looking Statements**

This press release may contain information about Hightimes Holding Corp.'s view of its future expectations, plans and prospects that constitute forward-looking statements. Actual results may differ materially from historical results or those indicated by these forward-looking statements as a result of a variety of factors including, but not limited to, risks and uncertainties associated with its ability to maintain and grow its business, variability of operating results, its development and introduction of new products and services, marketing and other business development initiatives, among other things. For further information about Hightimes, Hightimes encourages you to review its filings with the Securities and Exchange Commission, including its Form 1-A Offering Circular dated July 26, 2018 and all subsequent filings, including its Current Reports on Form 1-U.

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