

## TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1  
Stylesheet Version v1.2

ETAS ID: TM385310

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT		
<b>NATURE OF CONVEYANCE:</b>	CHANGE OF NAME		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
RCS CAPITAL CORPORATION		05/23/2016	Corporation: DELAWARE
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	ARETEC GROUP, INC.		
<b>Street Address:</b>	2711 CENTERVILLE ROAD		
<b>Internal Address:</b>	SUITE 400		
<b>City:</b>	WILMINGTON		
<b>State/Country:</b>	DELAWARE		
<b>Postal Code:</b>	19808		
<b>Entity Type:</b>	Corporation: DELAWARE		
<b>PROPERTY NUMBERS Total: 1</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
<b>Registration Number:</b>	4645920	RCS CAPITAL	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>	2126983599		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>			
<b>Phone:</b>	2126983500		
<b>Email:</b>	patents@dechert.com		
<b>Correspondent Name:</b>	DECHERT LLP		
<b>Address Line 1:</b>	1095 AVENUE OF THE AMERICAS		
<b>Address Line 4:</b>	NEW YORK, NEW YORK 10036-6797		
<b>NAME OF SUBMITTER:</b>	Alan Wang		
<b>SIGNATURE:</b>	/Alan Wang/		
<b>DATE SIGNED:</b>	05/23/2016		
<b>Total Attachments: 22</b>			
source=RCS CAPITAL CORPORATION - DE - Restated#page1.tif			
source=RCS CAPITAL CORPORATION - DE - Restated#page2.tif			
source=RCS CAPITAL CORPORATION - DE - Restated#page3.tif			
source=RCS CAPITAL CORPORATION - DE - Restated#page4.tif			

CH \$40.00 4645920

source=RCS CAPITAL CORPORATION - DE - Restated#page5.tif  
source=RCS CAPITAL CORPORATION - DE - Restated#page6.tif  
source=RCS CAPITAL CORPORATION - DE - Restated#page7.tif  
source=RCS CAPITAL CORPORATION - DE - Restated#page8.tif  
source=RCS CAPITAL CORPORATION - DE - Restated#page9.tif  
source=RCS CAPITAL CORPORATION - DE - Restated#page10.tif  
source=RCS CAPITAL CORPORATION - DE - Restated#page11.tif  
source=RCS CAPITAL CORPORATION - DE - Restated#page12.tif  
source=RCS CAPITAL CORPORATION - DE - Restated#page13.tif  
source=RCS CAPITAL CORPORATION - DE - Restated#page14.tif  
source=RCS CAPITAL CORPORATION - DE - Restated#page15.tif  
source=RCS CAPITAL CORPORATION - DE - Restated#page16.tif  
source=RCS CAPITAL CORPORATION - DE - Restated#page17.tif  
source=RCS CAPITAL CORPORATION - DE - Restated#page18.tif  
source=RCS CAPITAL CORPORATION - DE - Restated#page19.tif  
source=RCS CAPITAL CORPORATION - DE - Restated#page20.tif  
source=RCS CAPITAL CORPORATION - DE - Restated#page21.tif  
source=RCS CAPITAL CORPORATION - DE - Restated#page22.tif

# Delaware

The First State

Page 1

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "RCS CAPITAL CORPORATION", CHANGING ITS NAME FROM "RCS CAPITAL CORPORATION" TO "ARETEC GROUP, INC.", FILED IN THIS OFFICE ON THE TWENTY-THIRD DAY OF MAY, A.D. 2016, AT 2:38 O`CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.



  
Jeffrey W. Bullock, Secretary of State

5266716 8100  
SR# 20163586451

You may verify this certificate online at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

Authentication: 202365753  
Date: 05-23-16

**TRADEMARK**  
**REEL: 005798 FRAME: 0778**

**FOURTH AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION OF  
RCS CAPITAL CORPORATION**

**(Amended and Restated as of May 23, 2016)**

RCS Capital Corporation, a corporation organized and existing under the laws of the State of Delaware, does hereby certify:

1. The present name of the corporation is RCS Capital Corporation (the "**Corporation**"). The original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware (the "**Secretary of State**") on December 27, 2012, under the name of 405 Holding Corporation. The Amended and Restated Certificate of Incorporation was filed with the Secretary of State on June 6, 2013. The Second Amended and Restated Certificate of Incorporation was filed with the Secretary of State on March 14, 2014. The Third Amended and Restated Certificate of Incorporation was filed with the Secretary of State on July 3, 2014.

2. The Fourth Amended and Restated Certificate of Incorporation (hereafter and as amended from time to time, this "**Certificate**"), which both restates and further amends the provisions of the Corporation's Third Amended and Restated Certificate of Incorporation as hereinafter set forth, was duly adopted in accordance with the provisions of Sections 242, 245 and 303 of the DGCL (as defined below) on May 23, 2016 (the "**Emergence Date**").

3. The text of the Certificate is hereby amended and restated to read in its entirety as follows:

**ARTICLE 1**

Section 1.01. *Name.* The name of the corporation is Aretec Group, Inc.

**ARTICLE 2**

Section 2.01. *Address.* The address of its registered office in the State of Delaware is 2711 Centerville Road, Suite 400, City of Wilmington, County of New Castle, Delaware 19808. The name of its registered agent at such address is Corporation Service Company.

**ARTICLE 3**

Section 3.01. *Purpose.* The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware as the same exists or may hereafter be

amended (the “DGCL”).

#### ARTICLE 4

Section 4.01. *Capitalization*. The total number of shares of stock that the Corporation shall have authority to issue is 18,600,000 shares, consisting of solely:

(a) 13,600,000 shares of a single class of common stock, par value \$0.001 per share (the “**Common Stock**”); and

(b) 5,000,000 shares of Preferred Stock, par value \$0.001 per share (the “**Preferred Stock**”).

#### Section 4.02. *Common Stock*.

(a) Voting Rights. Each share of Common Stock shall be entitled to one vote per share on all matters on which stockholders generally are entitled to vote in person or by proxy. Except as otherwise required in this Certificate or by the DGCL, but subject to the rights of holders of any class or series of Preferred Stock, the holders of Common Stock shall vote together as a single class on all matters submitted to a vote of stockholders of the Corporation generally. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of holders of the voting power set forth in Section 9.01, irrespective of the provisions of Section 242(b)(2) of the DGCL.

(b) Dividends and Distributions. Subject to the DGCL and to the preferences applicable to any Preferred Stock outstanding at any time, if any, the holders of shares of Common Stock shall be entitled to receive such dividends and other distributions in cash, property or shares of stock of the Corporation as may be declared thereon by the Corporation’s Board of Directors (the “**Board**”) from time to time out of assets or funds of the Corporation legally available therefor.

(c) Liquidation. If the Corporation shall be liquidated, dissolved or wound up, whether voluntarily or involuntarily, the holders of the Common Stock shall be entitled to share ratably in the net assets of the Corporation remaining after payment of all preferences, if any, applicable to any outstanding shares of Preferred Stock.

#### Section 4.03. *Preferred Stock*.

(a) Terms. Except as otherwise provided in this Certificate or by the DGCL, the Board is hereby empowered, without any action or vote by the Corporation’s stockholders (except as may otherwise be provided by the terms of any class or series of Preferred Stock then outstanding), to authorize by resolution or resolutions from time to time the issuance of one or more classes or series of Preferred Stock, and to fix the designations, powers, preferences and relative, participating, optional or other rights, if any, and the qualifications, limitations or restrictions thereof, if any, with respect to each

such class or series of Preferred Stock, and the number of shares constituting each such class or series, and to increase or decrease the number of shares of any such class or series. Without limiting the generality of the foregoing, the authority of the Board with respect to each such class or series shall include the determination of the following:

(i) The dividend rate, if any, on the shares of that class or series;

(ii) The voting rights, if any, of the shares of that class or series; provided that, to the maximum extent permitted by the DGCL, such series will vote together with the Common Stock as a class on all matters to be voted on by the holders of the Common Stock;

(iii) Whether or not the shares of that class or series shall be redeemable, and, if so, the terms and conditions of such redemption, including the date or dates upon or after which they shall be redeemable, and the amount per share payable in the case of such redemption, which amount may vary under different conditions and at different redemption dates;

(iv) The rights of the shares of that class or series in the event of a voluntary or involuntary liquidation, dissolution or winding up of the Corporation; and

(v) Any other relative rights, preferences and limitations of that class or series.

(b) Voting Rights. To the maximum extent permitted by the DGCL, and in addition to any other right to vote as a separate class as may be determined by the Board and specified in the relevant certificate of designation, each share of Preferred Stock that is convertible into shares of Common Stock ("**Convertible Preferred Stock**") shall be entitled to one vote per share of Common Stock into which such share of Convertible Preferred Stock is entitled to convert on all matters in respect of which holders of Common Stock generally are entitled to vote in person or by proxy (including, for the avoidance of doubt, the election of directors).

Section 4.04. *Non-Voting Securities*. The Corporation shall not issue non-voting equity securities; provided, however, that the foregoing restriction shall (a) have no further force and effect beyond that required under Section 1123(a)(6) of Chapter 11 of Title 11 of the United States Code (the "**Bankruptcy Code**"), (b) only have such force and effect for so long as Section 1123 of the Bankruptcy Code is in effect and applicable to the Corporation, and (c) in all events may be amended or eliminated in accordance with applicable law as from time to time may be in effect. The prohibition on the issuance of non-voting equity securities is included in this Certificate in compliance with Section 1123(a)(6) of the Bankruptcy Code (11 U.S.C. §1123(a)(6)).

## ARTICLE 5

### Section 5.01. *Board of Directors*.

(a) Number. Except as otherwise provided in the DGCL, and subject to the terms of the Stockholders' Agreement, dated as of the Emergence Date, of the Corporation (as it may be amended, modified or supplemented from time to time in accordance with the terms thereof, the "**Stockholders' Agreement**"), the business and affairs of the Corporation shall be managed by or under the direction of the Board. The exact number of directors will initially be up to seven, and may be increased or decreased (but not below seven) from time to time solely by (i) resolution adopted by the affirmative vote of directors consisting of a majority of the Board and (ii) (x) if prior to the later of (x) the 2019 annual meeting of stockholders and (y) June 30, 2019, an affirmative vote of holders of not less than 75% of the voting power of all outstanding shares of Common Stock and Convertible Preferred Stock represented in person or by proxy at a meeting of stockholders at which a quorum is present and voting together as a single class on an as-converted basis, and (y) thereafter, an affirmative vote of holders of not less than two-thirds of the voting power of all outstanding shares of Common Stock and Convertible Preferred Stock represented in person or by proxy at a meeting of stockholders at which a quorum is present and voting together as a single class on an as-converted basis.

(b) Term. (1) The directors shall be divided into three classes, designated Class I, Class II and Class III. Directors initially designated as Class I directors shall serve for a term ending on the date of the 2017 annual meeting, directors initially designated as Class II directors shall serve for a term ending on the 2018 annual meeting, and directors initially designated as Class III directors shall serve for a term ending on the date of the 2019 annual meeting of stockholders; provided further that at the 2017 annual meeting of stockholders, the successors of the directors whose terms expire at that meeting shall be elected for a term expiring at the 2018 annual meeting of stockholders; at the 2018 annual meeting of stockholders, the successors of the directors whose terms expire at that meeting shall be elected for a term expiring at the 2019 annual meeting of stockholders; and at each annual meeting of stockholders thereafter, the directors shall be elected for terms expiring at the next annual meeting of stockholders. Notwithstanding the foregoing, each director shall hold office until such director's successor shall have been duly elected and qualified or until such director's earlier death, resignation or removal. In no event will a decrease in the number of directors shorten the term of any incumbent director.

(2) The names and mailing addresses of the persons who are to serve as directors of each Class are:

<b>Class</b>	<b>Name</b>
Class I	R. Lawrence Roth
Class II	David King

<b>Class</b>	<b>Name</b>
Class III	Michael Kaufman

(c) Required Vote for Election of Directors. Directors shall be elected by a plurality vote of the voting power of the outstanding shares of stock of the Corporation entitled to vote generally in the election of directors. In all elections of directors, every stockholder shall be entitled to as many votes as shall equal the number of votes which (but for this provision as to cumulative voting) such stockholder would be entitled to cast for the election of directors with respect to such stockholder's shares of stock multiplied by the number of directors to be elected by such stockholder, and such stockholder may cast all of such votes for a single director or may distribute them among the number to be voted for, or for any two or more of them as such stockholder may see fit.

(d) Vacancies on the Board. Except as otherwise provided in the Stockholders' Agreement, vacancies on the Board resulting from (x) death, resignation, removal or otherwise and (y) newly created directorships resulting from any increase in the number of directors, in either case shall be filled solely by (i) if prior to the later of (x) the 2019 annual meeting of stockholders and (y) June 30, 2019, the affirmative vote of holders of not less than two-thirds of the voting power of all outstanding shares of Common Stock and Convertible Preferred Stock represented in person or by proxy at a meeting of stockholders at which a quorum is present and voting together as a single class on an as-converted basis and (ii) thereafter, the affirmative vote of holders of a majority of the voting power of all outstanding shares of Common Stock and Convertible Preferred Stock represented in person or by proxy at a meeting of stockholders at which a quorum is present and voting together as a single class on an as-converted basis, and each director so elected shall hold office for the remaining term of office of the director whom he or she has replaced (or, in the case of directors elected to fill newly created directorships resulting from an increase in the number of directors, until the next annual meeting of stockholders) and his or her successor is elected and qualified (or until his or her earlier resignation or removal), and promptly after becoming aware of any vacancy the Corporation shall take all action necessary or advisable to solicit nominations from the stockholders and convene a special meeting of the stockholders for the purpose of filling such vacancy.

(e) Removal of Directors. Directors may be removed with or without cause only by (i) if prior to the later of (x) the 2019 annual meeting of stockholders and (y) June 30, 2019, the affirmative vote of holders of not less than 75% of the voting power of all outstanding shares of Common Stock and Convertible Preferred Stock represented in person or by proxy at a meeting of stockholders at which a quorum is present and voting together as a single class on an as-converted basis and (ii) thereafter, the affirmative vote of holders of not less than two-thirds of the voting power of all outstanding shares of Common Stock and Convertible Preferred Stock represented in person or by proxy at a meeting of stockholders at which a quorum is present and voting together as a single class on an as-converted basis; provided that if less than the



entire Board is to be removed, no director may be removed without cause if the votes cast against such director's removal would be sufficient to elect such director if then cumulatively voted at an election of the entire Board.

(f) Corporate Actions Requiring Supermajority Board Approval. Without limiting the generality of Section 5.01(a), the Corporation shall not, and shall not permit any of its subsidiaries to, take any of the following actions without the affirmative vote of directors constituting not less than two-thirds of the Board: (i) incur after the Emergence Date incremental debt for borrowed money in excess of \$40,500,000 in the aggregate (net of any repayments), except in the case of this clause (i) in connection with purchases of supplies, inventory, equipment or other assets in the ordinary course of business or draw-downs under credit agreements existing as of the Emergence Date, (ii) voluntarily prepay any outstanding debt for borrowed money (other than prepayments required by the Corporation's existing credit agreements as of the Emergence Date) or (iii) acquire any stock or other equity security in or any assets or business of, or invest or contribute capital to, any unaffiliated person or entity (including the acquisition of any company registered as a broker-dealer pursuant to the Exchange Act), or enter into any joint venture, for aggregate consideration from the Corporation and its subsidiaries of more than \$15,000,000 individually or in the aggregate in any calendar year, except in the case of this clause (iii) for purchases of supplies, inventory, equipment or other assets in the ordinary course of business; provided that, for the avoidance of doubt, this Section 5.01(f) shall not apply to loans (whether or not forgivable) made in connection with recruiting or retaining financial advisors.

(g) Corporate Actions Requiring Majority Board Approval. Without limiting the generality of Section 5.01(a), and in addition to any supermajority Board approval required pursuant to Section 5.01(f), the Corporation shall not, and shall not permit any of its subsidiaries to, take any of the following actions without the affirmative vote of directors constituting a majority of the Board (in the case of the following clause (ii), excluding from the numerator and denominator any director who is, or is a Related Party of, the person with whom the Corporation or any of its subsidiaries is proposing to enter into the relevant agreement or transaction with (or amendment or modification thereto)): (i) refinance any debt for borrowed money in excess of \$5,000,000 in the aggregate, (ii) enter into any agreement or transaction (or amendment or modification thereto) with any shareholder, director or officer of the Corporation or any of its subsidiaries or any "affiliate", "associate" or member of the "immediate family" of any such person (as such terms are respectively defined in Rule 12b-2 and 16a-1 of the Exchange Act) (collectively, a "**Related Party**"), except in the case of this clause (ii) in connection with any shareholder's (other than a director or officer's) employment with the Corporation or such subsidiary in the ordinary course of business, (iii) issue any shares of capital stock, (iv) sell, transfer, lease or otherwise dispose of (whether in one transaction or in a series of related transactions) assets, persons, entities, businesses or operations with a fair market value of more than \$5,000,000 individually, (v) make any material decision in connection with an initial public offering by the Corporation or any of its subsidiaries, (vi) any matter requiring shareholder approval referenced in

Sections 6.05(a) through (d) or (vii) loans (whether or not forgivable) made in connection with recruiting or retaining financial advisors in excess of individual and/or aggregate amounts to be determined from time to time by directors constituting a majority of the Board.

## ARTICLE 6

Section 6.01. *Action by Written Consent of Stockholders.* Any action required or permitted to be taken at any meeting of the stockholders may be taken without a meeting, without prior notice and without a vote, if stockholders having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted consent in writing, provided that the Corporation shall comply with its obligations under the DGCL (including Section 228(e) thereof).

Section 6.02. *Mandatory Offer.* If any person or entity (an “**Acquiror**”) desires to purchase a number of shares of capital stock that would result in the Acquiror owning (directly or indirectly, together with its affiliates) capital stock representing more than 50% of the voting power of all outstanding shares of capital stock of the Corporation on an as-converted basis (the “**Majority Threshold**”), the Acquiror shall first be required to make an offer to purchase all shares of Common Stock and Convertible Preferred Stock held by the other stockholders (the “**Minority Holders**”) at the highest per share price paid by the Acquiror for its most recently acquired 5% of the shares of Common Stock or Convertible Preferred Stock, as applicable (or, if higher, the highest price per share proposed to be paid for the applicable class of capital stock in the transaction that would result in the Acquiror exceeding the Majority Threshold) (the “**Offer Price**”); provided that the Offer Price with respect to any share of Convertible Preferred Stock shall be the greater of (x) the Offer Price applicable to the shares of Common Stock multiplied by the number of shares of Common Stock into which such share of Convertible Preferred Stock is entitled to convert and (y) the liquidation preference applicable to such share of Convertible Preferred Stock. The Acquiror shall provide notice of the applicable Offer Price and the other material terms and conditions thereof to the Minority Holders and, if a majority of the Minority Holders (voting together as a single class on an as-converted basis) represented in person or by proxy at a meeting of such stockholders at which a quorum is present (a “**Majority of the Minority Holders**”) approve such Offer Price and such other terms, the Acquiror shall be permitted to purchase the Majority Threshold and offer to purchase all shares of Common Stock and Convertible Preferred Stock held by the Minority Holders for the applicable Offer Price and on such other terms and conditions. If a Majority of the Minority Holders do not approve the Offer Price, then the Board shall engage a valuation expert to determine the purchase price for the shares of Common Stock and Convertible Preferred Stock held by the Minority Holders (and taking into account such other terms and conditions); provided that the purchase price for each share of Convertible Preferred Stock shall equal the greater of (x) the purchase price for each share of Common Stock as determined by such valuation expert multiplied by the number of shares of Common Stock into which such share of

Convertible Preferred Stock is entitled to convert and (y) the liquidation preference applicable to such share of Convertible Preferred Stock. Such purchase price or prices, as determined by such valuation expert in accordance with the prior sentence, shall be submitted to the Minority Holders for approval (together with the same other terms and conditions set forth in the Acquiror's initial notice to the Minority Holders). If a Majority of the Minority Holders do not approve the purchase price or prices as determined by the valuation expert, then the Acquiror shall not be permitted to purchase shares of capital stock that would result in a breach of the Majority Threshold. Any transfer of shares that would result in a person or entity acquiring shares that would result in a breach of the Majority Threshold shall be void *ab initio* if the Acquiror does not first comply with the provisions of this Section 6.02 and acquire at the same time (and in any event within 60 days following the date on which a Majority of the Minority Holders approved the purchase price or prices) all of the shares of Common Stock and Convertible Preferred Stock in respect of which the Minority Holders accepted the Acquiror's offer to purchase; provided that such 60-day period may be extended for a reasonable period of time not to exceed 270 days in order to obtain any required regulatory approvals. Any offer by the Acquiror pursuant to this Section 6.02 shall remain open for at least 30 days following the date on which a Majority of the Minority Holders approve the purchase price or prices and other material terms and conditions pursuant to this Section 6.02.

For purposes of this Certificate, "affiliate" means, with respect to any entity, any other entity directly or indirectly controlling, controlled by, or under common control with, such individual or entity as of the date on which, or at any time during the period for which, the determination of affiliation is being made (including any investment fund the primary investment advisor to which is such entity or an affiliate thereof). For purposes of the definition of affiliate, the term "control" (including the correlative meanings of the terms "controlled by" and "under common control with"), as used with respect to any entity, means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such entity, whether through the ownership of voting securities, by contract or otherwise.

**Section 6.03. *Preemptive Rights.*** Subject to any rights granted by the Board in respect of any Preferred Stock, the Corporation shall not issue or sell, agree to issue or sell, or reserve or set aside for issuance or sale, any shares of capital stock or other equity securities of the Corporation or any of its subsidiaries (including Preferred Stock, options, warrants to acquire shares of capital stock ("**Warrants**") and other similar instruments and any securities convertible into or exchangeable therefor) (collectively, the "**Preemptive Securities**"), unless the Corporation has first offered to sell to each Eligible Holder (as defined below) such stockholder's Pro Rata Share (as defined below) of the Preemptive Securities, at a price and on such other terms as have been specified by the Corporation in writing delivered to each such stockholder (the "**Preemptive Offer**"), which Preemptive Offer shall be on terms substantially identical to the terms of the Corporation's proposed issuance or sale of Preemptive Securities and shall remain open for a period of not less than 20 Business Days from the date it is

delivered by the Corporation (the “**Preemptive Offer Period**”). Notwithstanding the foregoing, Preemptive Securities shall not include (a) options or other equity securities or rights issued pursuant to an employee benefit plan or other incentive plan approved by the Board or upon the exercise of any such options or other equity securities in accordance with their terms, (b) equity securities issued by the Corporation or any of its subsidiaries as direct consideration in connection with the acquisition of another business or person by the Corporation or any subsidiary thereof, whether by merger, purchase or contribution of assets or otherwise, (c) equity securities issued as a result of any split off, reclassification or subdivision with respect to the equity securities of the Corporation, (d) equity securities issued in a public offering and listed on The New York Stock Exchange or the NASDAQ Stock Market, (e) equity securities issued by any subsidiary of the Corporation to the Corporation or to any other wholly owned subsidiary of the Corporation or, if such subsidiary is a joint venture, to the existing investors in such joint venture on a pro rata basis or otherwise in accordance with such subsidiary’s governing documents, (f) any Warrants for Common Stock issued on the Emergence Date or shares of Company Common Stock issued upon the exercise of any such Warrants so long as the exercise entitlement has not been modified since the issuance of such Warrants on the Emergence Date, and (g) equity securities issued pursuant to the terms of, or upon the exercise of, an equity security that was issued in an issuance subject to preemptive rights pursuant to this Section 6.03 so long as the issuance or conversion entitlement has not been modified since such the issuance of such equity securities. Each Eligible Holder may elect to purchase (or to have its designated affiliate, purchase) all or any portion of such stockholder’s Pro Rata Share of the Preemptive Securities as specified in the Preemptive Offer at the price and on the terms specified therein by delivering written notice of such election to the Corporation as soon as practicable but in any event before the expiration of the Preemptive Offer Period. Any Preemptive Securities not elected to be purchased by the end of the Preemptive Offer Period shall be reoffered for a five-day period by the Corporation on a pro rata basis to the Eligible Holders who have elected to purchase their full Pro Rata Share of the Preemptive Securities. In the event the Eligible Holders fail to exercise in full their preemptive rights as set forth above with respect to the Preemptive Securities, the Corporation shall have 60 days thereafter to sell such Preemptive Securities, on the same terms and conditions and at a cash or cash equivalent price that is not less than the price specified in the Preemptive Offer. In the event the Corporation has not sold the Preemptive Securities within such 60-day period, the Corporation shall not thereafter issue or sell any Preemptive Securities without first complying with the first offer rights set forth in this Section 6.03. Each stockholder’s “**Pro Rata Share**” of Preemptive Securities is the product of (x) the total number of Preemptive Securities and (y) a fraction, the numerator of which is the number of shares of Common Stock then owned by such stockholder, and the denominator of which is the total number of shares of Common Stock (assuming full conversion of all shares of Convertible Preferred Stock). An “**Eligible Holder**” is (a) a stockholder owning (directly or indirectly, together with its affiliates) not less than 5% of the voting power of all outstanding shares of Common Stock and Convertible Preferred Stock (on an as-converted basis), and (b) any stockholder as of the Emergence Date that (directly or indirectly, together with its

affiliates) continues to own shares of Common Stock and Convertible Preferred Stock representing (on an as-converted basis) at least 50% of the voting power as such stockholder owned on the Emergence Date (even if less than 5% of the voting power of all outstanding shares of Common Stock and Convertible Preferred Stock (on an as-converted basis)). The right to participate in the Preemptive Offer shall be transferable by an Eligible Holder in whole or in part, subject to the same terms applicable to the transfer and purchase of the Common Stock (including Section 6.06).

Section 6.04. *Section 203*. The Corporation shall not be governed by or subject to Section 203 of the DGCL.

Section 6.05. *Corporate Actions Requiring Stockholder Approval*. In addition to any other vote of the stockholders required by the DGCL, the Corporation shall not, and shall not permit any of its subsidiaries to:

(a) sell, transfer, lease or otherwise dispose of (whether in one transaction or in a series of related transactions) all or substantially all of the assets of the Corporation and its subsidiaries, without the affirmative vote of (i) if prior to the later of (x) the six-month anniversary of the 2017 annual meeting of stockholders and (y) December 31, 2017, holders of not less than 75% of the voting power of all outstanding shares of Common Stock and Convertible Preferred Stock represented in person or by proxy at a meeting of stockholders at which a quorum is present and voting together as a single class on an as-converted basis, (ii) thereafter, but prior to the later of (x) the 2018 annual meeting of stockholders and (y) June 30, 2018, holders of not less than 70% of the voting power of all outstanding shares of Common Stock and Convertible Preferred Stock represented in person or by proxy at a meeting of stockholders at which a quorum is present and voting together as a single class on an as-converted basis, (iii) thereafter, but prior to (x) the 2019 annual meeting of stockholders and (y) June 30, 2019, holders of not less than two-thirds of the voting power of all outstanding shares of Common Stock and Convertible Preferred Stock represented in person or by proxy at a meeting of stockholders at which a quorum is present and voting together as a single class on an as-converted basis, and (iv) thereafter, holders of a majority of the voting power of all outstanding shares of Common Stock and Convertible Preferred Stock voting together as a single class on an as-converted basis; provided that, in the case of the foregoing clauses (i), (ii) and (iii), if both the First Lien Holders' Director (as defined in the Stockholders' Agreement) and the Second Lien Holders' Director (as defined in the Stockholders' Agreement) have approved such transaction, then with respect to such transaction this clause (a) shall require only the affirmative vote of holders of a majority of the voting power of all outstanding shares of Common Stock and Convertible Preferred Stock, voting together as a single class on an as-converted basis);

(b) consummate any acquisition of a company or business (which includes any company registered as a broker-dealer pursuant to the Exchange Act) for fair market value greater than \$30,000,000 in any calendar year, or enter into any new line of business significantly different from that being conducted by the Corporation and its

subsidiaries, without the affirmative vote of (i) if prior to the later of (x) the 2019 annual meeting of stockholders and (y) June 30, 2019, holders of not less than two-thirds of the voting power of all outstanding shares of Common Stock and Convertible Preferred Stock represented in person or by proxy at a meeting of stockholders at which a quorum is present and voting together as a single class on an as-converted basis and (ii) thereafter, holders of a majority of the voting power of all outstanding shares of Common Stock and Convertible Preferred Stock represented in person or by proxy at a meeting of stockholders at which a quorum is present and voting together as a single class on an as-converted basis; provided that, in the case of the foregoing clause (i), if both the First Lien Holders' Director (as defined in the Stockholders' Agreement) and the Second Lien Holders' Director (as defined in the Stockholders' Agreement) have approved such transaction, then with respect to such transaction this clause (b) shall require only the affirmative vote of holders of a majority of the voting power of all outstanding shares of Common Stock and Convertible Preferred Stock represented in person or by proxy at a meeting of stockholders at which a quorum is present and voting together as a single class on an as-converted basis;

(c) except for the sale of the business and assets of Chargers Acquisition, LLC and Legend Group Holdings, LLC, sell, transfer, lease or otherwise dispose of (whether in one transaction or in a series of related transactions) assets, persons, entities, businesses or operations with a fair market value of more than \$30,000,000 individually or, during the 36-month period following the Emergence Date, more than \$90,000,000 in the aggregate, in either case without the affirmative vote of (i) if prior to the later of (x) the six-month anniversary of the 2017 annual meeting of stockholders and (y) December 31, 2017, holders of not less than 75% of the voting power of all outstanding shares of Common Stock and Convertible Preferred Stock represented in person or by proxy at a meeting of stockholders at which a quorum is present and voting together as a single class on an as-converted basis, (ii) thereafter, but prior to the later of (x) the 2018 annual meeting of stockholders and (y) June 30, 2018, holders of not less than 70% of the voting power of all outstanding shares of Common Stock and Convertible Preferred Stock represented in person or by proxy at a meeting of stockholders at which a quorum is present and voting together as a single class on an as-converted basis, (iii) thereafter, but prior to the later of (x) the 2019 annual meeting of stockholders and (y) June 30, 2019, holders of not less than two-thirds of the voting power of all outstanding shares of Common Stock and Convertible Preferred Stock represented in person or by proxy at a meeting of stockholders at which a quorum is present and voting together as a single class on an as-converted basis, and (iv) thereafter, holders of a majority of the voting power of all outstanding shares of Common Stock and Convertible Preferred Stock represented in person or by proxy at a meeting of stockholders at which a quorum is present and voting together as a single class on an as-converted basis; provided that, in the case of the foregoing clauses (i), (ii) and (iii), if both the First Lien Holders' Director (as defined in the Stockholders' Agreement) and the Second Lien Holders' Director (as defined in the Stockholders' Agreement) have approved such transaction, then with respect to such transaction this clause (c) shall require only the affirmative vote of holders of a majority of the voting power of all outstanding shares of Common

Stock and Convertible Preferred Stock represented in person or by proxy at a meeting of stockholders at which a quorum is present and voting together as a single class on an as-converted basis; and

(d) liquidate, dissolve or wind up, or recapitalize, reorganize or consolidate or merge with any other person (other than any merger or consolidation solely between or among wholly owned subsidiaries of the Corporation and a merger effected exclusively for the purpose of changing the domicile of the Corporation or such subsidiary), without the affirmative vote of (i) if prior to the later of (x) the six-month anniversary of the 2017 annual meeting of stockholders and (y) December 31, 2017, holders of not less than 75% of the voting power of all outstanding shares of Common Stock and Convertible Preferred Stock represented in person or by proxy at a meeting of stockholders at which a quorum is present and voting together as a single class on an as-converted basis, (ii) thereafter, but prior to the later of (x) the 2018 annual meeting of stockholders and (y) June 30, 2018, holders of not less than 70% of the voting power of all outstanding shares of Common Stock and Convertible Preferred Stock represented in person or by proxy at a meeting of stockholders at which a quorum is present and voting together as a single class on an as-converted basis, (iii) thereafter, but prior to the later of (x) the 2019 annual meeting of stockholders and (y) June 30, 2019, holders of not less than two-thirds of the voting power of all outstanding shares of Common Stock and Convertible Preferred Stock represented in person or by proxy at a meeting of stockholders at which a quorum is present and voting together as a single class on an as-converted basis, and (iv) thereafter, holders of a majority of the voting power of all outstanding shares of Common Stock and Convertible Preferred Stock voting together as a single class on an as-converted basis; provided that, in the case of the foregoing clauses (i), (ii) and (iii), if both the First Lien Holders' Director (as defined in the Stockholders' Agreement) and the Second Lien Holders' Director (as defined in the Stockholders' Agreement) have approved such transaction, then with respect to such transaction this clause (d) shall require only the affirmative vote of holders of a majority of the voting power of all outstanding shares of Common Stock and Convertible Preferred Stock, voting together as a single class on an as-converted basis.

Section 6.06. *Transfer Restrictions.* In no event may any transfer of Common Stock or Preferred Stock by any stockholder be made if (i) the Board concludes in good faith that such transfer is reasonably likely to (a) result in the Corporation having more than 350 holders of record or (b) require approval by FINRA (unless that approval has been obtained), (ii) such transfer would violate the registration requirements of the Securities Act of 1933, as amended, or the rules or regulations promulgated thereunder, or the registration or qualification requirements of the securities laws of any applicable state, or (iii) such transfer is to a person who (a) in the reasonable opinion of the Board, is engaged (whether directly or through affiliated entities) in any material business that is competitive with the Corporation, unless such assignee certifies that it has adequate internal controls to prevent the sharing of confidential information within its organization, or (b) does not execute a joinder to the Stockholders' Agreement agreeing to be bound by the terms thereof (including the transfer restrictions and voting agreements set forth

therein). The Board, in its sole discretion, may require the transferee to furnish, at such assignee's expense, an opinion of counsel that such transfer is not in violation of the registration requirements of the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder, or the registration or qualification requirements of the securities laws of any applicable state. No shares of capital stock (including any shares of Common Stock or Preferred Stock) shall be issued to any person who is not a party to the Stockholders' Agreement (including upon the exercise of any Warrants or any options or other shares of capital stock issued to any director, officer or employee of the Corporation under any employee benefit plan) unless and until such person shall have executed and delivered to the Corporation a joinder to the Stockholders' Agreement agreeing to be bound by the terms thereof (including the transfer restrictions and voting agreements set forth therein). Any transfer of Common Stock or Preferred Stock in violation of the foregoing shall be void *ab initio*. In no event will the Corporation conduct a public offering of any shares of capital stock or other equity securities of the Corporation or any subsidiary thereof unless such public offering results in the Corporation's capital stock being listed on The New York Stock Exchange or the NASDAQ Stock Market as of the closing of such public offering.

## ARTICLE 7

Section 7.01. *Limited Liability of Directors.* To the fullest extent permitted by the DGCL as it now exists and as it may hereafter be amended, no director shall be personally liable to the Corporation or any of its stockholders for monetary damages for breach of any fiduciary or other duty as a director, provided that this provision shall not eliminate or limit the liability of a director (1) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (2) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, (3) under Section 174 of the DGCL, or (4) for any transaction from which the director derived an improper personal benefit (unless and to the extent the DGCL eliminates this requirement). Neither the amendment nor the repeal of this ARTICLE 7 shall eliminate or reduce the effect thereof in respect of any matter occurring, or any cause of action, suit or claim that, but for this ARTICLE 7, would accrue or arise, prior to such amendment or repeal.

### Section 7.02. *Indemnification.*

(a) Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (collectively, a "proceeding"), by reason of the fact that he or she is or was a director or an officer of the Corporation or is or was serving at the request of the Corporation as a director, officer or trustee of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (an "indemnitee"), whether the basis of such proceeding is alleged action in an official capacity as a director, officer or trustee or in any other capacity while serving as a director, officer or trustee, shall be indemnified and held harmless by the Corporation to the fullest extent permitted by the DGCL, as the same



exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than such law permitted the Corporation to provide prior to such amendment), against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) incurred or suffered by such indemnitee in connection therewith; provided, however, that with respect to proceedings to enforce rights to indemnification, the Corporation shall indemnify any such indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized by the Board.

(b) In addition to the right to indemnification conferred in Section 7.02(a), an indemnitee shall also have the right to be advanced by the Corporation the expenses (including attorney's fees) incurred in defending any such proceeding in advance of its final disposition (an "advancement of expenses"); provided, however, that, if DGCL requires, an advancement of expenses incurred by an indemnitee in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the Corporation of an undertaking (an "undertaking"), by such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter a "final adjudication") that such indemnitee is not entitled to be indemnified for such expenses under this Section 7.02(b) or otherwise.

(c) If a claim under Sections 7.02(a) or 7.02(b) is not paid in full by the Corporation within 60 days after a written claim has been received by the Corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be 20 days, the indemnitee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. To the fullest extent permitted by the DGCL, if successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit. In (i) any suit brought by the indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnitee to enforce a right to an advancement of expenses) it shall be a defense that, and (ii) in any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that, the indemnitee has not met any applicable standard for indemnification set forth under the DGCL. Neither the failure of the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth under the DGCL, nor an actual determination by the Corporation (including its directors who are not parties to such action, a committee of such directors, independent

legal counsel, or its stockholders) that the indemnitee has not met such applicable standard of conduct, shall create a presumption that the indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the indemnitee, be a defense to such suit. In any suit brought by the indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Section 7.02 or otherwise shall be on the Corporation.

(d) Subject to Section 7.02(g), the rights to indemnification and to the advancement of expenses conferred in this Section 7.02 shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, this Certificate, the By-Laws, agreement or otherwise.

(e) The Corporation may purchase and maintain insurance on its own behalf and 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 expense, liability or loss asserted against such person and incurred by such person in any such capacity or arising out of such person's status as such, whether or not the Corporation would have the power to indemnify such person against such liability under the DGCL. Without limiting the generality of the foregoing, the Corporation shall maintain customary insurance at its expense to protect any person who is or was serving as a director or officer of the Corporation or, at the Corporation's request, another corporation, partnership, joint venture, trust or other enterprise to the maximum extent of the coverage available for any such director or officer under such policy or policies against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL.

(f) The Corporation may, to the extent authorized from time to time by the Board, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Corporation to the fullest extent of the provisions of this Section 7.02 with respect to the indemnification and advancement of expenses of directors and officers of the Corporation.

(g) The rights conferred upon indemnitees in this Section 7.02 shall be contract rights and such rights shall continue as to an indemnitee who has ceased to be a director, officer or trustee and shall inure to the benefit of the indemnitee's heirs, executors and administrators. Any amendment, alteration or repeal of this Section 7.02 that adversely affects any right of an indemnitee or its successors shall be prospective only and shall not limit, eliminate, or impair any such right with respect to any proceeding involving any occurrence or alleged occurrence of any action or omission to act that took place prior to such amendment or repeal. Each non-executive indemnitee shall be entitled to the same indemnification rights (including entering into a director

indemnification agreement to the extent any other director of the Corporation is or at any time hereafter becomes a party to such an agreement), and coverage under the Corporation's directors' and officers' insurance policies, as other non-executive indemnitees. The Corporation acknowledges that certain non-executive indemnitees may have certain rights to indemnification, advancement of expenses and/or insurance provided by the investment funds and accounts to which such indemnitee provides advisory services (collectively, the "**Other Indemnitors**"). The Corporation hereby agrees (i) that the Corporation is the indemnitor of first resort (i.e., the Corporation's obligations to such indemnitee are primary and any obligation of the Other Indemnitors to advance expenses or to provide indemnification for the same expenses or liabilities incurred by such indemnitee are secondary), (ii) that the Corporation shall be required to advance the full amount of expenses incurred by such indemnitee and shall be liable for the full amount of all expenses and losses to the extent legally permitted and as required by the terms of this Certificate and/or the By-Laws, without regard to any rights such indemnitee may have against the Other Indemnitors, and (iii) that the Corporation irrevocably waives, relinquishes and releases the Other Indemnitors from any and all claims against the Other Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. The Corporation further agrees that no advancement or payment by the Other Indemnitors on behalf of such indemnitee with respect to any claim for which such indemnitee has sought indemnification from the Corporation shall affect the foregoing and the Other Indemnitors shall have a right of contribution and/or be subrogated to the extent of such advancement or payment to all of the rights of recovery of such indemnitee against the Corporation. The Corporation and such indemnitee agree that the Other Indemnitors are express third party beneficiaries of the terms of this Section 7.02.

## ARTICLE 8

Section 8.01. *Corporate Opportunities*. The Corporation expressly acknowledges and agrees that certain non-executive stockholders and directors and their respective affiliates may presently or in the future have debt or equity investments in, or other business relationships, ventures, agreements or arrangements with entities engaged in the business of, or otherwise competitive with, the Corporation or its subsidiaries (including in areas in which the Corporation or any of its subsidiaries may in the future engage) and in related businesses other than through the Corporation or any of its subsidiaries), and nothing contained herein, in the By-Laws or in the Stockholders' Agreement shall restrict the ability of any such stockholder or director to engage in any such business. In furtherance and not in limitation of the foregoing, the Corporation renounces, to the fullest extent permitted by law, any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, any Excluded Opportunity. An "**Excluded Opportunity**" is any matter, transaction or interest that is presented to, or acquired, created or developed by, or which otherwise comes into the possession of (i) any director of the Corporation who is not an employee of the Corporation or any of its subsidiaries, or (ii) any holder of Common Stock or Preferred Stock or any partner, member, director, stockholder, employee or agent of any such

holder, other than someone who is an employee of the Corporation or any of its subsidiaries (collectively, “Covered Persons”), unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, a Covered Person expressly and solely in such Covered Person’s capacity as a director of the Corporation. Any person purchasing or otherwise acquiring any interest in any shares of capital stock of the Corporation shall be deemed to have notice of and to have consented to the provisions of this ARTICLE 8. None of the alteration, amendment, change and repeal of any provision of this ARTICLE 8 nor the adoption of any provision of this Certificate inconsistent with any provision of this ARTICLE 8 shall eliminate or reduce the effect of this ARTICLE 8 in respect of any matter occurring, or any cause of action, suit or claim that, but for this ARTICLE 8, would accrue or arise, prior to such alteration, amendment, change, repeal or adoption.

## ARTICLE 9

Section 9.01. *Amendment to Certificate*. The Corporation reserves the right to amend this Certificate in any manner permitted by the DGCL and all rights and powers conferred upon stockholders, directors and officers herein are granted subject to this reservation. Notwithstanding the foregoing, the provisions set forth in ARTICLES 4, 5, 6, 7, 8, 9 and 11 may not be amended, altered, changed or repealed in any respect (including, for the avoidance of doubt, by amendment, merger, consolidation or otherwise), and no other provision of this Certificate, the By-Laws or the Stockholders’ Agreement may be adopted, amended or repealed which would have the effect of modifying or permitting the circumvention of the provisions set forth in ARTICLES 4, 5, 6, 7, 8, 9 and 11, in each case unless such action is approved by (i) the affirmative vote of directors constituting a majority of the Board and (ii) in addition to any other vote of the stockholders required by the DGCL (but without regard to the provisions of Section 242(b)(2) of the DGCL), (x) in the case of an amendment to Section 4.01 to increase the number of authorized shares of Common Stock or Preferred Stock to the extent necessary to issue additional shares of Common Stock or Preferred Stock, as applicable, in an issuance to which the Eligible Holders are entitled to preemptive rights pursuant to Section 6.03, the affirmative vote of holders of a majority of the voting power of the outstanding shares of Common Stock and Convertible Preferred Stock, voting together as a single class on an as-converted basis, (y) in the case of an amendment that is recommended by the Board in response to a determination by the managing underwriter in an initial public offering by the Corporation in which the offered securities will be listed on The New York Stock Exchange or the NASDAQ Stock Market, and which amendment is expressly conditioned on the consummation of such initial public offering, the affirmative vote of holders of a majority of the voting power of the outstanding shares of Common Stock and Convertible Preferred Stock, voting together as a single class on an as-converted basis and (z) in all other cases, the affirmative vote of holders of not less than 75% of the voting power of the outstanding shares of Common Stock and Convertible Preferred Stock represented in person or by proxy at a meeting of stockholders at which a quorum is present and voting together as a single class on an as-converted basis.

Section 9.02. *Amendment to By-Laws.* Subject to any restrictions and requirements set forth in the By-Laws of the Corporation (the “**By-Laws**”), in the Certificate or in the Stockholders’ Agreement, the Board is expressly authorized to make, amend, alter, change, add to or repeal the By-Laws without the assent or vote of the stockholders in any manner not inconsistent with the DGCL, this Certificate, or Sections 8 or 9 of the Stockholders’ Agreement, except for Sections 2.03 (Annual Meetings), 2.04 (Special Meetings), 2.06 (Quorum), 2.07 (Voting), 2.10 (Nomination of Directors), 2.11 (Notice of Business), 3.01 (General Powers), 3.02 (Number, Election, Classes, Term of Office, Vacancies and Removal), 3.03 (Quorum), 3.08 (Committees), 3.13 (Chairperson), 3.14 (Related Party Transactions), 5.05 (Voting of Securities Owned by the Corporation), 5.06 (Amendments), 5.07 (Transfers of Shares) and 5.08 (Conflicts) of the By-Laws, which may not be amended, altered, changed or repealed in any respect (including, for the avoidance of doubt, by amendment, merger, consolidation or otherwise), and no other provision of this Certificate, the Stockholders’ Agreement or the By-Laws may be adopted, amended or repealed which would have the effect of modifying or permitting the circumvention of the provisions set forth in such sections of the By-Laws, in each case without (i) the affirmative vote of directors constituting a majority of the Board and (ii) in addition to any other vote of the stockholders required by the DGCL or the Certificate, (x) in the case of an amendment that is recommended by the Board in response to a determination by the managing underwriter in an initial public offering by the Corporation in which the offered securities will be listed on The New York Stock Exchange or the NASDAQ Stock Market, and which amendment is expressly conditioned on the consummation of such initial public offering, the affirmative vote of holders of a majority of the voting power of the outstanding shares of Common Stock and Convertible Preferred Stock, voting together as a single class on an as-converted basis, and (y) in all other cases, the affirmative vote of holders of not less than 75% of the voting power of the outstanding shares of Common Stock and Convertible Preferred Stock represented in person or by proxy at a meeting of stockholders at which a quorum is present and voting together as a single class on an as-converted basis.

## ARTICLE 10

Section 10.01. *Forum Selection.* The Court of Chancery of the State of Delaware (the “**Court of Chancery**”) shall be the sole and exclusive forum for any stockholder (including a beneficial owner) to bring (a) any derivative action or proceeding brought on behalf of the Corporation, (b) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or employee of the Corporation to the Corporation or the Corporation’s stockholders, (c) any action asserting a claim against the Corporation, its directors, officers or employees arising pursuant to any provision of the DGCL, this Certificate or the By-Laws of the Corporation, or (d) any action asserting a claim against the Corporation, its directors, officers or employees governed by the internal affairs doctrine, except for, as to each of (a) through (d) above, any claim as to which the Court of Chancery determines that there is an indispensable party not subject to the jurisdiction of the Court of Chancery (and the indispensable

party does not consent to the personal jurisdiction of the Court of Chancery within ten days following such determination), which is vested in the exclusive jurisdiction of a court or forum other than the Court of Chancery, or for which the Court of Chancery does not have subject matter jurisdiction. If any provision or provisions of this ARTICLE 10 shall be held to be invalid, illegal or unenforceable as applied to any person or entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this ARTICLE 10 (including, without limitation, each portion of any sentence of this ARTICLE 10 containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) and the application of such provision to other persons or entities and circumstances shall not in any way be affected or impaired thereby.

## ARTICLE 11

Section 11.01. *Conflicts.* In the event of any conflict between the terms and provisions of this Certificate and those contained in Section 8 or Section 9 of the Stockholders' Agreement, the terms and provisions of the applicable section of the Stockholders' Agreement shall govern and control, except as provided otherwise by mandatory provisions of DGCL. In the event of any conflict between the terms and provisions of this Certificate and those contained in any other section of the Stockholders' Agreement (other than Section 8 or Section 9 thereof) or in the By-Laws, those contained in this Certificate shall govern and control.

IN WITNESS WHEREOF, the undersigned has executed this Amended and Restated Certificate of Incorporation this 23rd day of May, 2016.

**RCS CAPITAL CORPORATION**



By: \_\_\_\_\_

Name: David Orlofsky

Title: Chief Restructuring Officer

# State Of Delaware

## Name Reservation Status

Reservation Name	Entity Name	Entity Type	Cost	Status	Expiration Date
6046102	Aretec Group, INC.	Corporation	\$75.00	Reserved	9/16/2016