

F06000007408

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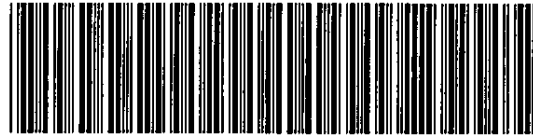
(Business Entity Name)

(Document Number)

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TALLAHASSEE, FLORIDA

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1-2-07

## COVER LETTER

**TO:** Amendment Section  
Division of Corporations

**SUBJECT:** TRISTAR HEALTHCARE, INC.  
(Name of Corporation)

**DOCUMENT NUMBER:** F06000007408

The enclosed Amendment and fee are submitted for filing.

Please return all correspondence concerning this matter to the following:

Mindy Kushner

(Name of Contact Person)

Smith Moore LLP

(Firm/Company)

3700 One Atlantic Center  
1201 West Peachtree Street

(Address)

Atlanta, GA 30309

(City/State and Zip Code)

For further information concerning this matter, please call:

Mindy Kushner

(Name of Contact Person)

at ( 404 ) 962-1039

(Area Code & Daytime Telephone Number)

Enclosed is a check for the following amount:

☐

\$35.00 Filing Fee

☐

\$43.75 Filing Fee &  
Certificate of Status

☒

\$43.75 Filing Fee &  
Certified Copy  
(Additional copy is  
enclosed)

☐

\$52.50 Filing Fee,  
Certificate of Status &  
Certified Copy  
(Additional copy is  
enclosed)

**Mailing Address:**

Amendment Section  
Division of Corporations  
P.O. Box 6327  
Tallahassee, FL 32314

**Street Address:**

Amendment Section  
Division of Corporations  
Clifton Building  
2661 Executive Center Circle  
Tallahassee, FL 32301

**PROFIT CORPORATION**  
**APPLICATION BY FOREIGN PROFIT CORPORATION TO FILE AMENDMENT TO**  
**APPLICATION FOR AUTHORIZATION TO TRANSACT BUSINESS IN FLORIDA**  
(Pursuant to s. 607.1504, F.S.)

**SECTION I**  
**(1-3 MUST BE COMPLETED)**

F06000007408

(Document number of corporation (if known))

1. TRISTAR HEALTHCARE, INC.  
(Name of corporation as it appears on the records of the Department of State)
2. Georgia 3. November 30, 2006  
(Incorporated under laws of) (Date authorized to do business in Florida)

**SECTION II**  
**(4-7 COMPLETE ONLY THE APPLICABLE CHANGES)**

4. If the amendment changes the name of the corporation, when was the change effected under the laws of its jurisdiction of incorporation? 12/22/2006
5. SUNCREST HEALTHCARE, INC.  
(Name of corporation after the amendment, adding suffix "corporation," "company," or "incorporated," or appropriate abbreviation, if not contained in new name of the corporation)

FILED  
07 JAN - 20 AM 10:31  
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TALLAHASSEE, FLORIDA

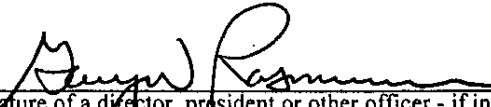
(If new name is unavailable in Florida, enter alternate corporate name adopted for the purpose of transacting business in Florida)

6. If the amendment changes the period of duration, indicate new period of duration.

\_\_\_\_\_  
(New duration)

7. If the amendment changes the jurisdiction of incorporation, indicate new jurisdiction.

\_\_\_\_\_  
(New jurisdiction)

  
(Signature of a director, president or other officer - if in the hands of a receiver or other court appointed fiduciary, by that fiduciary)

Gary W. Rasmussen  
(Typed or printed name of person signing)

CFO  
(Title of person signing)

# STATE OF GEORGIA

## Secretary of State

Corporations Division

315 West Tower

#2 Martin Luther King, Jr. Dr.

Atlanta, Georgia 30334-1530

## CERTIFICATE OF RESTATED ARTICLES NAME CHANGE

I, **Cathy Cox**, the Secretary of State and the Corporations Commissioner of the State of Georgia, hereby certify under the seal of my office that

### **TRISTAR HEALTHCARE, INC.**

a Domestic Profit Corporation

have been duly restated and amended and the name changed to

### **SUNCREST HEALTHCARE, INC.**

by the filing of articles of restatement on **12/22/2006** in the Office of the Secretary of State and by paying of fees as provided by Title 14 of the Official Code of Georgia Annotated. Attached hereto is a true and correct copy of said articles of restatement.

WITNESS my hand and official seal of the City of Atlanta  
and the State of Georgia on December 22, 2006



Cathy Cox  
Secretary of State

**AMENDED AND RESTATED ARTICLES OF INCORPORATION  
OF  
TRISTAR HEALTHCARE, INC.**

Pursuant to Sections 14-2-1003 and 14-2-1007 of the Georgia Business Corporations Code, TRISTAR HEALTHCARE, INC., a Georgia corporation, hereby amends and restates its Articles of Incorporation in their entirety, with the text of the Amended and Restated Articles of Incorporation to read as follows:

**ARTICLE I**

The name of this Corporation is "SunCrest Healthcare, Inc."

**ARTICLE II**

The Corporation will have perpetual duration.

**ARTICLE III**

The Corporation is organized pursuant to the Georgia Business Corporations Code and is organized to engage in any form of or type of business and for any lawful purpose or purposes under the laws of the State of Georgia.

**ARTICLE IV**

The Corporation is for profit.

**ARTICLE V**

A. The Corporation is authorized to issue two classes of stock to be designated, respectively, "**Common Stock**" and "**Preferred Stock**." The total number of shares that the Corporation is authorized to issue is one hundred thousand five hundred (100,500) shares, one hundred thousand (100,000) shares of which shall be Common Stock (the "**Common Stock**") and five hundred (500) shares of which shall be Preferred Stock (the "**Preferred Stock**"). The Preferred Stock shall have no par value per share and the Common Stock shall have no par value per share.

B. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares of Common Stock then outstanding) by the affirmative vote of the holders of a majority of the stock of the Corporation (voting together on an as-if-converted basis).

C. All five hundred (500) of the authorized shares of Preferred Stock are hereby designated "Series A Preferred Stock" (the "**Series Preferred**").

D. The rights, preferences, privileges, restrictions and other matters relating to the Series Preferred are as follows:



## 1. DIVIDEND RIGHTS.

(a) Holders of Series Preferred, in preference to the holders of Common Stock, shall be entitled to receive cash dividends at the rate of fifteen percent (15%) per annum (compounded quarterly) of the Original Issue Price (as defined below) on each outstanding share of Series Preferred (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof) (the "**Accruing Dividends**"). Such Accruing Dividends shall accrue daily (and be compounded quarterly) from the issue date for each share of Series Preferred to and including the earlier of the date on which (i) a Liquidation Event (as defined below) occurs, (ii) such share is converted into Common Stock, or (iii) such share is redeemed; but such Accruing Dividends shall only be paid, in each case, out of assets legally available therefor. Such Accruing Dividends shall be cumulative and shall accrue whether or not they have been declared by the Board of Directors (the "**Board**") and whether or not there are profits, surplus or other funds of the Corporation available for the payment of such dividends.

(b) The "**Original Issue Price**" of the Series Preferred shall be Two Thousand Dollars (\$2,000) per share of Series Preferred.

(c) So long as any shares of Series Preferred are outstanding, the Corporation shall not pay or declare any dividend, whether in cash or property, or make any other distribution on the Common Stock, or purchase, redeem or otherwise acquire for value any shares of Common Stock until all Accruing Dividends as set forth in Section 1(a) above on the Series Preferred shall have been paid or declared and set apart; provided, however, that the provisions of this Section 1(c) shall not apply to a dividend payable in Common Stock, or any repurchase of any outstanding securities of the Corporation that is approved by (i) the Board and (ii) the holders of at least a majority of the outstanding Series Preferred.

(d) In the event dividends are paid on any share of Common Stock, the Corporation shall pay an additional dividend on all outstanding shares of Series Preferred in a per share amount equal (on an as-if-converted to Common Stock basis) to the amount paid or set aside for each share of Common Stock.

2. **VOTING RIGHTS.** The holders of the Series Preferred shall not have any voting rights; *provided, however*, that the holders of the Series Preferred shall have voting rights as required by applicable law, and *provided, further*, that the Corporation shall obtain the written consent of the holders of at least a majority of the Series Preferred before amending or waiving any provision of this Restated Certificate or the bylaws of the Corporation in a manner adverse to the holders of the Series Preferred.

## 3. LIQUIDATION RIGHTS.

(a) Upon any liquidation, dissolution, or winding up of the Corporation, whether voluntary or involuntary (a "**Liquidation Event**"), before any distribution or payment shall be made to the holders of any Common Stock, the holders

of Series Preferred shall be entitled to be paid out of the assets of the Corporation legally available for distribution, or the consideration received in such transaction, for each share of Series Preferred held by them, an amount per share of Series Preferred equal to the Original Issue Price plus all accrued and unpaid Accruing Dividends on the Series Preferred (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof) (the "**Liquidation Preference**"). If, upon any such liquidation, dissolution, or winding up, the assets of the Corporation (or the consideration received in such transaction) shall be insufficient to make payment in full to all holders of Series Preferred of the Liquidation Preference set forth in this Section 3(a), then such assets (or consideration) shall be distributed among the holders of Series Preferred at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled.

(b) After the payment of the full Liquidation Preference of the Series Preferred as set forth in Section 3(a) above, the assets of the Corporation legally available for distribution in such Liquidation Event (or the consideration received in such transaction), if any, shall be distributed ratably to the holders of the Common Stock. Notwithstanding anything to the contrary contained in this Article V, in a Liquidation Event, each holder of applicable Series Preferred shall be entitled to the greater of (i) such holder's respective Liquidation Preference with respect to all shares of Series Preferred held by such holder, or (ii) the amount such holder of Series Preferred would have been entitled to receive had such holder of Series Preferred converted their shares of Series Preferred into Common Stock immediately prior to such Liquidation Event at the then effective conversion price.

#### 4. ASSET TRANSFER; ACQUISITION; INITIAL OFFERING RIGHTS.

(a) In the event that the Corporation is a party to an Acquisition or Asset Transfer (as hereinafter defined), or in the event of the closing of a firmly underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of the Corporation's Common Stock for the account of the Corporation (an "**Initial Offering**"), then each holder of Series Preferred shall be entitled to receive, for each share of Series Preferred then held, either (i) out of the proceeds of such Acquisition or Asset Transfer, or (ii) immediately prior to the closing of the Initial Offering, as the case may be, the amount of cash, securities or other property to which such holder would be entitled to receive in a Liquidation Event pursuant to Section 3 above.

(b) For the purposes of this Section 4: (i) "**Acquisition**" shall mean any consolidation or merger of the Corporation with or into any other corporation or other entity or person, or any other corporate reorganization, in which the stockholders of the Corporation immediately prior to such consolidation, merger or reorganization, own less than 50% of the voting power of the surviving entity immediately after such consolidation, merger or reorganization; or (B) any transaction or series of related transactions to which the Corporation is a party in which in excess of fifty percent (50%) of the Corporation's voting power is transferred; *provided* that an Acquisition shall not

include (x) any consolidation or merger effected exclusively to change the domicile of the Corporation, or (y) any transaction or series of transactions principally for bona fide equity financing purposes in which cash is received by the Corporation or any successor or indebtedness of the Corporation is cancelled or converted or a combination thereof; and (ii) "**Asset Transfer**" shall mean a sale, lease or other disposition of all or substantially all of the assets of the Corporation.

(c) In any Acquisition or Asset Transfer, (i) if the consideration to be received is securities of a corporation or other property other than cash, its value will be deemed its fair market value as determined in good faith by the Board on the date such determination is made and (ii) any payments or proceeds that could be made or distributed following the closing of any Acquisition or Asset Transfer as the result of termination or expiration of an escrow or operation of an earn-out or similar arrangement or termination of dissenter's or appraisal rights, shall be treated for the purposes of this Section 3 as if paid at the closing of such Acquisition or Asset Transfer.

## 5. **CONVERSION RIGHTS.**

The holders of the Series Preferred shall have the following rights with respect to the conversion of the Series Preferred into shares of Common Stock (the "**Conversion Rights**"):

(a) **Optional Conversion.** Subject to and in compliance with the provisions of this Section 5 (and in particular with regard to Section 5(j)), any shares of Series Preferred may, at the option of the holder, be converted at any time into fully-paid and nonassessable shares of Common Stock. The number of shares of Common Stock to which a holder of Series Preferred shall be entitled upon conversion shall be the product obtained by multiplying the "**Series Preferred Conversion Rate**" then in effect (determined as provided in Section 5(b)) by the number of shares of Series Preferred being converted.

(b) **Series Preferred Conversion Rate.** The conversion rate in effect at any time for conversion of the Series Preferred (the "**Series Preferred Conversion Rate**") shall be the quotient obtained by dividing the Original Issue Price of the Series Preferred by the "Series Preferred Conversion Price," calculated as provided in Section 5(c).

(c) **Series Preferred Conversion Price.** The conversion price for the Series Preferred shall initially be the Original Issue Price of the Series Preferred (the "**Series Preferred Conversion Price**"). Such initial Series Preferred Conversion Price shall be adjusted from time to time in accordance with this Section 5. All references to the Series Preferred Conversion Price herein shall mean the Series Preferred Conversion Price as so adjusted.

(d) **Mechanics of Conversion.** Each holder of Series Preferred who desires to convert the same into shares of Common Stock pursuant to this Section 5 shall surrender the certificate or certificates therefor, duly endorsed, at the



office of the Corporation or any transfer agent for the Series Preferred, and shall give written notice to the Corporation at such office that such holder elects to convert the same. Such notice shall state the number of shares of Series Preferred being converted. Thereupon, the Corporation shall promptly issue and deliver at such office to such holder a certificate or certificates for the number of shares of Common Stock to which such holder is entitled and shall promptly pay (i) in cash or, to the extent sufficient funds are not then legally available therefor, in Common Stock (at the Common Stock's fair market value determined by the Board as of the date of such conversion), any accrued and unpaid dividends on the shares of Series Preferred being converted and (ii) in cash (at the Common Stock's fair market value determined by the Board as of the date of conversion) the value of any fractional share of Common Stock otherwise issuable to any holder of Series Preferred. Such conversion shall be deemed to have been made at the close of business on the date of such surrender of the certificates representing the shares of Series Preferred to be converted, and the person entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock on such date.

(e) **Adjustment for Stock Splits and Combinations.** If at any time or from time to time after the date that the first share of Series Preferred is issued (the "**Original Issue Date**") the Corporation effects a subdivision of the outstanding Common Stock without a corresponding subdivision of the Preferred Stock, the Series Preferred Conversion Price in effect immediately before that subdivision shall be proportionately decreased. Conversely, if at any time or from time to time after the Original Issue Date the Corporation combines the outstanding shares of Common Stock into a smaller number of shares without a corresponding combination of the Preferred Stock, the Series Preferred Conversion Price in effect immediately before the combination shall be proportionately increased. Any adjustment under this Section 5(e) shall become effective at the close of business on the date the subdivision or combination becomes effective.

(f) **Adjustment for Common Stock Dividends and Distributions.** If at any time or from time to time after the Original Issue Date the Corporation pays to holders of Common Stock a dividend or other distribution in additional shares of Common Stock without a corresponding dividend or other distribution to holders of Preferred Stock, the Series Preferred Conversion Price that is then in effect shall be decreased as of the time of such issuance, as provided below:

(i) The Series Preferred Conversion Price shall be adjusted by multiplying the Series Preferred Conversion Price then in effect by a fraction equal to:

(A) the numerator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance, and

(B) the denominator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such

issuance plus the number of shares of Common Stock issuable in payment of such dividend or distribution;

(ii) If the Corporation fixes a record date to determine which holders of Common Stock are entitled to receive such dividend or other distribution, the Series Preferred Conversion Price shall be fixed as of the close of business on such record date and the number of shares of Common Stock shall be calculated immediately prior to the close of business on such record date; and

(iii) If such record date is fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Series Preferred Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Series Preferred Conversion Price shall be adjusted pursuant to this Section 5(f) to reflect the actual payment of such dividend or distribution.

**(g) Adjustment for Reclassification, Exchange, Substitution, Reorganization, Merger or Consolidation.** If at any time or from time to time after the Original Issue Date, the Common Stock issuable upon the conversion of the Series Preferred is changed into the same or a different number of shares of any class or classes of stock, whether by recapitalization, reclassification, merger, consolidation or otherwise (other than an Acquisition or Asset Transfer as defined in Section 4 or a subdivision or combination of shares or stock dividend or a reorganization, merger, consolidation or sale of assets provided for elsewhere in this Section 5), in any such event each holder of Series Preferred shall then have the right to convert such stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification, merger, consolidation or other change by holders of the maximum number of shares of Common Stock into which such shares of Series Preferred could have been converted immediately prior to such recapitalization, reclassification, merger, consolidation or change, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof.

In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 5 with respect to the rights of the holders of Series Preferred after the capital reorganization to the end that the provisions of this Section 5 (including adjustment of the Series Preferred Conversion Price then in effect and the number of shares issuable upon conversion of the Series Preferred) shall be applicable after that event and be as nearly equivalent as practicable.

**(h) Certificate of Adjustment.** In each case of an adjustment or readjustment of the Series Preferred Conversion Price for the number of shares of Common Stock or other securities issuable upon conversion of the Series Preferred, if the Series Preferred is then convertible pursuant to this Section 5, the Corporation, at its expense, shall compute such adjustment or readjustment in accordance with the provisions hereof and prepare a certificate showing such adjustment or readjustment, and shall mail such certificate, by first class mail, postage prepaid, to each registered holder of Series Preferred at the holder's address as shown in the Corporation's books.

The certificate shall set forth such adjustment or readjustment, showing in detail the facts upon which such adjustment or readjustment is based.

**(i) Notices of Record Date.** Upon (i) any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, or (ii) any Acquisition (as defined in Section 4) or other capital reorganization of the Corporation, any reclassification or recapitalization of the capital stock of the Corporation, any merger or consolidation of the Corporation with or into any other corporation, or any Asset Transfer (as defined in Section 4), or any voluntary or involuntary dissolution, liquidation or winding up of the Corporation, the Corporation shall mail to each holder of Series Preferred at least ten (10) days prior to the record date specified therein (or such shorter period approved by the holders of at least a majority of the outstanding Series Preferred) a notice specifying (A) the date on which any such record is to be taken for the purpose of such dividend or distribution and a description of such dividend or distribution, (B) the date on which any such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up is expected to become effective, and (C) the date, if any, that is to be fixed as to when the holders of record of Common Stock (or other securities) shall be entitled to exchange their shares of Common Stock (or other securities) for securities or other property deliverable upon such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up.

**(j) Automatic Conversion.** Each share of Series Preferred shall automatically be converted into shares of Common Stock, based on the then-effective Series Preferred Conversion Price, at any time upon the affirmative election of the holders of at least a majority of the outstanding shares of the Series Preferred. Upon such automatic conversion, any accrued and unpaid dividends shall be paid in accordance with the provisions of Section 5(d), and the outstanding shares of Series Preferred shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; *provided, however*, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such shares of Series Preferred are either delivered to the Corporation or its transfer agent as provided below, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. Upon the occurrence of such automatic conversion of the Series Preferred, the holders of Series Preferred shall surrender the certificates representing such shares at the office of the Corporation or any transfer agent for the Series Preferred. Thereupon, there shall be issued and delivered to such holder promptly at such office and in its name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of Series Preferred surrendered were convertible on the date on

which such automatic conversion occurred, and any accrued and unpaid dividends shall be paid in accordance with the provisions of Section 5(d).

**(k) Fractional Shares.** No fractional shares of Common Stock shall be issued upon conversion of Series Preferred. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of Series Preferred by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after the aforementioned aggregation, the conversion would result in the issuance of any fractional share, the Corporation shall, in lieu of issuing any fractional share, pay cash equal to the product of such fraction multiplied by the Common Stock's fair market value (as determined by the Board) on the date of conversion.

**(l) Reservation of Stock Issuable Upon Conversion.** The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series Preferred, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series Preferred. If at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series Preferred, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

**(m) Notices.** Any notice required by the provisions of this Section 4 shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient; if not, then on the next business day, (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with verification of receipt. All notices shall be addressed to each holder of record at the address of such holder appearing on the books of the Corporation.

**(n) Payment of Taxes.** The Corporation will pay all taxes (other than taxes based upon income) and other governmental charges that may be imposed with respect to the issue or delivery of shares of Common Stock upon conversion of shares of Series Preferred, excluding any tax or other charge imposed in connection with any transfer involved in the issue and delivery of shares of Common Stock in a name other than that in which the shares of Series Preferred so converted were registered.

## **6. REDEMPTION.**

**(a)** The Corporation shall be obligated to redeem the Series Preferred as follows:

(i) The holders of at least a majority of the then outstanding shares of Series Preferred, voting together as a separate class, may require the Corporation, to the extent it may lawfully do so, to redeem all or any portion of the Series Preferred upon prior written notice to the Corporation (the "**Redemption Notice**") sent by such holders at any time following the earlier of (a) the acceleration by the holder thereof of any amounts due and owing under that certain Secured Promissory Note issued on or around the Original Issue Date by the Corporation (and certain of its subsidiaries) as borrower to Prudent Capital II, LP as holder pursuant to the terms thereof (the "**Note**"); and (b) the fifth anniversary of the Original Issue Date (any such date, a "**Redemption Date**"). The Corporation shall effect such redemption within fifteen (15) days after receipt of such Redemption Notice by paying in cash in exchange for the shares of Series Preferred to be redeemed a sum equal to the Liquidation Preference per share of Series Preferred pursuant to the terms of Section 6(b). The total amount to be paid for the Series Preferred is hereinafter referred to as the "**Redemption Price**." Shares subject to redemption pursuant to this Section 6(a) shall be redeemed from each holder of Series Preferred on a pro rata basis, based on the number of shares then held.

(ii) If the Corporation does not have sufficient funds legally available to redeem all shares to be redeemed pursuant to Section 6(a)(i) above, then it shall so notify such holders and shall redeem such shares pro rata (based on the portion of the aggregate Redemption Price payable to them) to the extent possible and shall redeem the remaining shares to be redeemed as soon as sufficient funds are legally available.

(b) On or prior to date that is fifteen (15) days after the date it receives a Redemption Notice (the "**Deposit Date**"), the Corporation shall deposit the Redemption Price of all shares to be redeemed with a bank or trust Corporation having aggregate capital and surplus in excess of \$100,000,000, as a trust fund, with irrevocable instructions and authority to the bank or trust Corporation to pay, on and after such Deposit Date, the Redemption Price of the shares to their respective holders upon the surrender of their share certificates. Any moneys deposited by the Corporation pursuant to this Section 6(b) for the redemption of shares thereafter converted into shares of Common Stock pursuant to Section 5 hereof no later than the fifth (5th) day preceding the applicable Redemption Date shall be returned to the Corporation forthwith upon such conversion. The balance of any funds deposited by the Corporation pursuant to this Section 6(b) remaining unclaimed at the expiration of one (1) year following such Deposit Date shall be returned to the Corporation promptly upon its written request.

(c) On or after such Deposit Date, each holder of shares of Series Preferred to be redeemed shall surrender such holder's certificates representing such shares to the Corporation at its principal executive office, and thereupon the Redemption Price of such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be canceled. In the event less than all the shares represented by such certificates are redeemed, a new certificate shall be issued

representing the unredeemed shares. From and after such Deposit Date, unless there shall have been a default in payment of the Redemption Price or the Corporation is unable to pay the Redemption Price due to not having sufficient legally available funds, all rights of the holder of such shares as holder of Series Preferred (except the right to receive the Redemption Price without interest upon surrender of their certificates), shall cease and terminate with respect to such shares; *provided* that in the event that shares of Series Preferred are not redeemed due to a default in payment by the Corporation or because the Corporation does not have sufficient legally available funds, such shares of Series Preferred shall remain outstanding and shall be entitled to all of the rights and preferences provided herein until redeemed.

(d) In the event of a call for redemption of any shares of Series Preferred, the Conversion Rights (as defined in Section 5) for such Series Preferred shall terminate as to the shares designated for redemption at the close of business on the fifth (5th) day preceding the applicable Redemption Date, unless default is made in payment of the Redemption Price.

(e) The Corporation may redeem, to the extent it may lawfully do so, the Series Preferred upon written notice to holders of Series Preferred following the later to occur of (i) the repayment of all outstanding principal, interest, late charges, penalties, fees and/or expenses then due and owing under the Note and (ii) the second anniversary of the Original Issue Date (the "**Call Date**"). The Corporation shall pay the Redemption Price in cash or immediately available funds within fifteen (15) days of receipt of such notice by the holders of Series Preferred. Shares subject to redemption pursuant to this Section 6(e) shall be redeemed from each holder of Series Preferred on a pro rata basis, based on the number of shares then held. On the Call Date, each holder of shares of Series Preferred to be redeemed shall surrender such holder's certificates representing such shares to the Corporation at its principal executive office, and thereupon the Redemption Price of such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be canceled. From and after such Call Date and following payment in full of the Redemption Price, all rights of the holder of such shares as holder of Series Preferred (except the right to receive the Redemption Price without interest upon surrender of their certificates) shall cease and terminate with respect to such shares.

#### **7. NO REISSUANCE OF SERIES PREFERRED.**

No shares or shares of Series Preferred acquired by the Corporation by reason of redemption, purchase, conversion or otherwise shall be reissued.

#### **ARTICLE VI**

The registered agent for the Corporation is Barbara L. Rasmussen. The registered office of the Corporation is 2820-A Lassiter Road, Suite 150, Marietta, Cobb County, Georgia 30062.

## **ARTICLE VII**

The mailing address of the principal place of business of the Corporation is 2820-A Lassiter Road, Suite 150, Marietta, Georgia 30062.

## **ARTICLE VIII**

A. No director of the Corporation shall be personally liable to the Corporation or its shareholders for monetary damages for breach of his duty of care or other duty as a director, provided that this provision shall eliminate or limit the liability of a director only to the extent permitted from time to time by the Georgia Business Corporations Code or any successor law or laws, except liability for:

1. any appropriation, in violation of his duties, of any business opportunity of the Corporation;
2. acts or omissions that involve intentional misconduct or a knowing violation of law;
3. the types of liabilities set forth in Section 14-2-831 of the Georgia Business Corporations Code; or
4. any transaction from which the director derived an improper material personal benefit.

B. Any repeal or modification of this Article by the shareholders and the Corporation shall be prospective only and shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

## **ARTICLE IX**

Any action required or permitted by applicable sections of the Georgia Business Corporations Code to be taken at a shareholders' meeting may be taken without a meeting if all the shareholders entitled to vote on such action, or a majority of shareholders, sign one or more written consents describing the action taken and the consents are delivered to the Corporation for inclusion in the minutes or filing with the Corporation's corporate records. No written consent shall be valid unless the consenting shareholder has been furnished the same material that would have been required to be sent to shareholders in a notice of meeting at which the proposed action would have been submitted to the shareholders for action, including notice of any applicable dissenters' rights as provided in applicable sections of the Georgia Business Corporations Code.

The Amended and Restated Articles of Incorporation of the Corporation were approved by the unanimous consent of the shareholders on December 15, 2006 in accordance with Section 14-2-2006 of the Georgia Business Corporations Code and adopted by the

unanimous consent of the Board of Directors of the Corporation on December 15, 2006.

**IN WITNESS WHEREOF**, the President of the Corporation has executed these Articles of Amendment on the 22 day of December, 2006.

TriStar Healthcare, Inc.

By:   
Barbara L. Rasmussen  
President and CEO

SECRETARY OF STATE  
2006 DEC 22 P 12:56  
CORPORATIONS DIVISION



**VERIFICATION OF REQUEST FOR PUBLICATION OF  
NOTICE OF INTENT TO FILE  
AMENDED AND RESTATED ARTICLES OF INCORPORATION  
TO CHANGE NAME OF CORPORATION**

The undersigned, as attorney for TriStar Healthcare, Inc., hereby certifies that a request for publication as required by O.C.G.A. § 14-2-1006 has been made to the Marietta Daily Journal, and payment therefore has been made as required by said Code section.

This 22<sup>nd</sup> day of December, 2006.

**TRISTAR HEALTHCARE, INC.**

By: 

Barry Herrin, Attorney for the Corporation