

L98000000187

Incon Care Group, Inc.  
Requestor's Name

2209 Crestmoor Dr., # 220  
Address

Nashville, TN 37215  
City/State/Zip Phone #

000002378740--1  
-12/22/97--01036--015  
\*\*\*\*122.50 \*\*\*\*122.50  
Office Use Only

CORPORATION NAME(S) & DOCUMENT NUMBER(S), (if known):

1. \_\_\_\_\_  
(Corporation Name) Document #

2. \_\_\_\_\_  
(Corporation Name) Document # 000002378740--1  
-02/19/98--01018--001  
\*\*\*\*162.50 \*\*\*\*162.50

3. \_\_\_\_\_  
(Corporation Name) Document #

4. \_\_\_\_\_  
(Corporation Name) Document #

☐ Walk in

☐ Pick up time \_\_\_\_\_

☐ Certified Copy

☐ Mail out

☐ Will wait

☐ Photocopy

☐ Certificate of Status

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98 FEB 17 AM 9 00  
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TALLAHASSEE, FLORIDA

NEW FILINGS	
<input type="checkbox"/>	Profit
<input type="checkbox"/>	NonProfit
<input type="checkbox"/>	Limited Liability
<input type="checkbox"/>	Domestication
<input type="checkbox"/>	Other

AMENDMENTS	
<input type="checkbox"/>	Amendment
<input type="checkbox"/>	Resignation of R.A., Officer/ Director
<input type="checkbox"/>	Change of Registered Agent
<input type="checkbox"/>	Dissolution/Withdrawal
<input type="checkbox"/>	Merger

Name	Availability
OTHER FILINGS	
Examiner's Annual Report	DCC
Updater's Fictitious Name	DCC
Updater's Name Reservation	
Updater's	DCC
Advisory	DCC
W. P. Verifier	DCC

REGISTRATION/ QUALIFICATION	
<input type="checkbox"/>	Foreign
<input type="checkbox"/>	Limited Partnership
<input type="checkbox"/>	Reinstatement
<input type="checkbox"/>	Trademark
<input type="checkbox"/>	Other

L98000000187  
(Corporation)

C. TAX \_\_\_\_\_  
FILING 162.50  
R. AGENT FEE \_\_\_\_\_  
C. COPY \_\_\_\_\_  
TOTAL \_\_\_\_\_

N. BANK	
Examiner's Initials	
BALANCE DUE	
REFUND	

W97000028768



FLORIDA DEPARTMENT OF STATE

Sandra B. Mortham  
Secretary of State

December 29, 1997

INCON CARE GROUP, INC.  
2209 CRESTMOOR DR., #220  
NASHVILLE, TN 37215

SUBJECT: FLA-INCON, L.C.  
Ref. Number: W97000028768

We have received your document for FLA-INCON, L.C. and your check(s) totaling \$122.50. However, the enclosed document has not been filed and is being returned for the following correction(s):

Effective April 23, 1997, the fees to qualify a foreign limited liability company total \$285.00 and breakdown as follows: \$250.00 filing fee for the application and affidavit and \$35 registered agent designation fee. An additional \$52.50 is due for each certified copy requested and an additional \$8.75 is due for each certificate of status requested.

The effective day must be specific and cannot be prior to the date of filing.

The document must contain both the street address of the principal office and the mailing address of the limited liability company.

The document must contain the name, title, and business address of each managing member or manager who will manage the foreign limited liability company in the state of Florida. Please insert "MGRM" in the title portion for each managing member and "MGR" in the title portion for each manager.

An affidavit is required pursuant to section 608.407(2), Florida Statutes, declaring the following: (1) the limited liability company has at least two members; (2) the actual amount of cash contributions; (3) the agreed value and a description of any property other than cash contributed; and (4) the total amount of cash or property anticipated to be contributed by the members.

Please return your document, along with a copy of this letter, within 60 days or your filing will be considered abandoned.

If you have any questions concerning the filing of your document, please call (850) 487-6913.

Diane Cushing  
Corporate Specialist

Letter Number: 497A00060687



FLORIDA DEPARTMENT OF STATE  
Sandra B. Mortham  
Secretary of State

January 27, 1998

INCON CARE GROUP, INC.  
2209 CRESTMOOR DR., #220  
NASHVILLE, TN 37215

SUBJECT: FLA-INCON, L.C.  
Ref. Number: W97000028768

We have received your document for FLA-INCON, L.C. and your check(s) totaling \$285.00. However, the document has not been filed and is being retained in this office for the following:

We are returning the attached affidavit because you must give a specific amount you can not say in excess of.

Please return your document, along with a copy of this letter, within 60 days or your filing will be considered abandoned.

If you have any questions concerning the filing of your document, please call (850) 487-6913.

Diane Cushing  
Corporate Specialist

Letter Number: 598A00004507

ARTICLES OF ORGANIZATION

OF

FLA-INCON L.C.

The undersigned person hereby forms a limited liability company under the laws of the State of Florida.

ARTICLE I

NAME

The name and address of the company shall be:

FLA-INCON L.C.  
1544 Placentia Avenue  
Coral Gables, FL 33134

ARTICLE II

TERM OF EXISTENCE

This company is to exist perpetually, commencing on the date of the filing of these ARTICLES OF ORGANIZATION which is the 20<sup>TH</sup> day of January, 1998.

ARTICLE III

REGISTERED AGENT AND INITIAL OFFICE AND MAILING ADDRESS

The Registered Agent and the street/mailing address of the principal office of the company shall be:

REGISTERED AGENT  
Michael J. Gerber  
1544 Placentia Avenue  
Coral Gables, FL 33146

PRINCIPAL OFFICE/MAILING ADDRESS

1544 Placentia Avenue

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Coral Gables, FL 33134

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TALLAHASSEE, FLORIDA

ARTICLE IV

ADMISSION OF ADDITIONAL MEMBERS

The members shall only allow additional members to be admitted, upon unanimous assent. The members reserve the right to set the cash and other contribution requirements for new members.

ARTICLE V

RIGHT TO CONTINUE BUSINESS

The remaining members of the company shall be authorized to continue the business following the death, retirement, resignation, expulsion, bankruptcy or dissolution of a member, including any other occurrence that acts to terminate the continued membership of a member of the company.

ARTICLE VI

MANAGEMENT OF THE COMPANY

The management of the company is reserved to the members. The managing members, managers and Florida business addresses of those individuals are as follows:

- 1) W. Barry Goodman, MGRM, 1544 Plasentia Avenue, Coral Gables, FL 33134.

2) Richard Miles, MGRM, 1544 Plasentia Avenue, Coral Gables, FL 33134.

3) Michael J. Gerber, MGR, 1544 Plasentia Avenue, Coral Gables, FL 33134.

ARTICLE VII

CONFLICT OF INTEREST

No contract between this company and another company or another individual shall be invalidated by reason of the fact that one or more of the officers or directors of this company are officers or directors of the said other company, or by reason of the fact that one or more of the officers or directors of this company may be the other individual or individuals contracting with this company.

ARTICLE VIII

AMENDMENT

These ARTICLES OF ORGANIZATION may be amended in the manner provided by law. Every amendment shall be approved by majority vote of the members.

IN WITNESS WHEREOF, the undersigned has set his hand and seal this 20<sup>TH</sup> day of January, 1998.

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TALLAHASSEE, FLORIDA



Michael J. Gerber

STATE OF FLORIDA

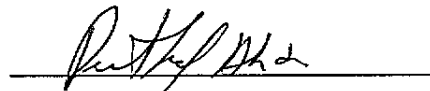
COUNTY OF DADE

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TALLAHASSEE, FLORIDA

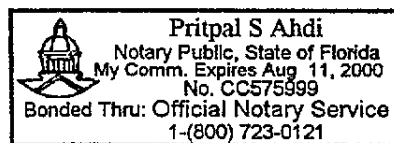
BEFORE ME, a Notary Public, personally appeared Michael J. Gerber, to me known to be the person described as the person executing these ARTICLES OF ORGANIZATION or has produced FLDL as identification and who executed the foregoing ARTICLES OF ORGANIZATION, and acknowledged before me that he subscribed to these ARTICLES OF ORGANIZATION and did/did not take an oath.

WITNESS my hand and official seal at Dade County, Florida, this 20 day of January, 1998.

My Commission Expires: Aug 11, 2000



NOTARY PUBLIC



CERTIFICATE DESIGNATING PLACE OF BUSINESS OR  
DOMICILE FOR THE SERVICE OF PROCESS WITHIN THIS  
STATE, NAMING AGENT UPON WHOM PROCESS MAY BE SERVED

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TALLAHASSEE, FLORIDA

In pursuance of Chapter 608.415, Florida Statutes, the following is submitted, in compliance with said statute:

That FLA-INCON L.C., desiring to organize under the laws of the State of Florida, with its initial registered office, as indicated in the ARTICLES OF ORGANIZATION, has named Michael J. Gerber, 1544 Plasentia Avenue, Coral Gables, FL 33134, County of Dade, State of Florida, as its agent to accept service of process within this State.

ACKNOWLEDGMENT:

Having been named to accept service of process for the above stated Company, at the place designated in this certificate, the undersigned hereby agrees to act in this capacity, is familiar with the requirements of this undertaking, and agrees to comply with the provisions of said statute relative to keeping open said office.

  
Michael J. Gerber



## MEMORANDUM OF AGREEMENT

This Memorandum of Agreement is entered this 1<sup>st</sup> day of December 1997, by and between Incon Care Group, LLC, Incon Care Group, Inc., Incon Partners, Inc., and SouthCare Management Services, Inc., relating to that certain Joint Venture Agreement of even date.

The purpose of this Memorandum of Agreement is to affirmatively state and for all parties to agree, to the amendment in the Joint Venture Agreement that SouthCare Management Services, Inc., will replace the entity Incon Partners, Inc., as a member of the Florida Limited Company to be formed and named FL-INCON, LC and that Incon Care Group, Inc., will replace the entity, Incon Care Group, LLC, as a member of the Florida Limited Company to be formed and named FL-INCON, LC. By the representative signatures below, the parties capitulate to the above described amendment.

Incon Care Group, LLC

BY: W. Barry Goodman  
ITS: PRES.

Incon Partners, Inc.

BY: [Signature]  
ITS: P. PRESIDENT

SouthCare Management Services, Inc.

BY: [Signature]  
ITS: PRESIDENT

Incon Care Group, Inc.

BY: [Signature]  
ITS: VP-CFO Sec/Treas

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TALLAHASSEE, FLORIDA

## JOINT VENTURE AGREEMENT

THIS JOINT VENTURE AGREEMENT is entered into and made effective as of Dec 1 1997, by and between Incon Care Group, L.L.C., a Tennessee limited liability company, and Incon Partners, Inc., a Florida corporation,. The joint venturers are sometimes herein referred to individually as a "Member" and collectively as the "Members".

### ARTICLE I

#### FORMATION, PURPOSE AND INDUCING REPRESENTATIONS

##### Section 1.1 Name of business organization.

The business organization described in and formed pursuant to the terms and conditions of this Agreement will be a Florida Limited Liability Company, as authorized by the Florida Limited Liability Company Act, F.S. Chapter 608, (the "LLC") which shall conduct its affairs under the name of FLA-INCON LC, or such other name or names as may be agreed to from time to time by the Members. The Members shall execute, publish and record any required notice of the use of such fictitious name under which the LLC may be lawfully operated.

##### Section 1.2 Principal Office.

The principal business office of the LLC shall be located for the present time in Palm Beach County, Florida, but such location may be changed or expanded from time to time by decision of the Members.

##### Section 1.3 Term of Existence.

The LLC shall commence on the date set forth in the preamble to the document creating the entity, as filed with the Florida Secretary of State and shall remain in existence until properly terminated and dissolved as provided in ARTICLE IX below or by operation of law.

##### Section 1.4 Formation, Purpose and Scope.

The LLC is being formed and operated in accordance with the provisions of this Agreement and, where not in conflict with the terms hereof, the Florida Limited Liability Act, as amended from time to time. The membership of the LLC will be constituted between

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TALLAHASSEE, FLORIDA

the incorporation of two (2) corporate entities, Incon Care Group, L.L.C, a Tennessee limited Liability Company that will control seventy percent (70%) of the membership of the LLC and Incon Partners, Inc., a Florida Corporation (that will control thirty percent (30%) of the LLC.

LLC activities shall be limited to the acquisition, development, renovation, operation, management, lease and/or sale of that certain business operation which provides medical care relating to the diagnosis and treatment of fecal and urinary incontinence (the "Business") Nothing in this Agreement shall be deemed to restrict in any way the freedom of any Member to conduct any other business or activity without any accountability to the LLC or the other Members, even if such business or activity competes with the business of the LLC. No Member, or constituent of any Member shall be allowed to compete (defined as providing incontinence therapy, or being involved with any entity that provides such services, as a partner, officer, director or shareholder) within Broward County, Florida during any period of time that any related Member possesses at least a ten percent (10%) interest in the LLC. If a members interest in the LLC drops below ten percent (10%), this agreement not to compete in Broward County, Florida shall be for a term of six (6) months. Except as expressly provided in this Agreement, no Member shall have any actual authority to act for, or assume any obligations or responsibility on behalf of, the other Member or the LLC.

#### Section 1.5 Inducing Representations and Warranties.

In order to induce the other to enter into this Agreement, each Member makes the representations and warranties, as applicable, set forth below and does hereby agree to indemnify and hold each other harmless from any and all loss, expense or liability that any other may suffer as a result of any inaccuracy as of the date hereof in such representations and warranties:

(a) The corporate Members of the LLC will be lawfully incorporated and in good standing under the law of that entity's state, and have the power to contract and to conduct the Business. The execution and delivery of this Agreement has been properly approved by the Board of directors of the Members. This Agreement constitutes the legal, valid and binding obligation of the Members, enforceable in accordance with the terms hereof, subject to any applicable bankruptcy, insolvency or other similar laws affecting creditors' rights generally.

(b) There is no claim, litigation, proceeding or

governmental investigation pending, or, so far as is known to the Members, threatened against or relating to the Member's properties or businesses or the transactions contemplated by this Agreement, or personally against any Members which does or could materially and adversely affect the ability of such Member to enter into this Agreement or to carry out its obligations hereunder, and, so far as is known to the Member, there is no basis for any such claim, litigation, proceeding or governmental investigation, except as has been fully disclosed by written notice to, and approved by, each other Member. The parties recognize that the current shareholders of Incon Partners, Inc., were involved with certain other individuals in a similar venture under the corporate structure of The Brownell Center of Palm Beach, Inc., and Incontech, Inc., which are Florida corporations that are currently not conducting business. The individuals (other than the current shareholders of Incon Partners, Inc.) involved in this venture were B. Kenneth Spitler, Bernard Kiesel and Daniel Lewis. It is possible that these individuals could attempt to assert some claim against the current shareholders of Incon Partners, Inc., which claims, if asserted, could potentially effect the LLC. Incon Partners, Inc., and their individual shareholders executing this Agreement, agree to indemnify and hold the LLC harmless from all claims asserted due to these individuals former relationship with the Incon Partners, Inc., shareholders. Except as provided herein, pending or existing litigation against any individual member, not directly related to the current Florida operations, is excluded from this section.

(c) Neither consummation of the transactions contemplated by this Agreement on the part of each Member to be performed, nor the fulfillment of the terms, conditions and provisions of this Agreement conflict with or result in the breach of any of the terms, conditions or provisions of, or constitute a default under, any agreement, indenture, instrument or undertaking to which each is a party.

## ARTICLE II

### MISCELLANEOUS FINANCIAL AND ACCOUNTING MATTERS

#### Section 2.1 Accounting Year and Method: Books and Records.

The accounting year of the LLC shall be determined by the Members. The books of the LLC shall be kept in accordance with such accounting method as the Members shall determine to be appropriate, utilizing in all cases the accounting principles employed by the

LLC for federal income tax purposes. All books and records of the LLC shall be kept at the business office of the LLC or at such other location as may be deemed appropriate by the Members, and shall be made available for examination by each Member or any duly authorized representative at all reasonable times.

Section 2.2 Statement of Financial Condition.

The LLC's financial records shall be closed as of the end of each LLC accounting year and statements shall be promptly prepared reflecting (a) the financial condition of the LLC as of the end of such year, and (b) its profit or loss derived from operations conducted during such year, which statements shall be furnished to each Member, as soon as practicable thereafter, not to exceed 60 days following the close of each such year.

Section 2.3 Independent Audit.

Upon the written request of any Member, the financial records of the LLC shall be audited as of the close of any accounting year, at LLC expense, by such nationally recognized firm of independent certified public accountants as the Members shall designate

Section 2.4 Income Tax Information.

Each Member shall be provided with a copy of the LLC's annual federal income tax return, and such additional data as is necessary to adequately disclose each class of income, gain, loss or deduction realized or incurred by the LLC during the preceding taxable year and each Member's allocable share thereof. Such return and data shall be furnished as soon as practicable after the close of the LLC's taxable year, and at least one week prior to the due date (without extension of the filing) of such return with the Internal Revenue Service.

Section 2.5 Maintenance of Cash Assets.

All cash funds of the LLC from whatever source received shall be invested in short term governmental or corporate securities, in cash items such as money market or other cash funds or certificates of deposit, or in such other form of investment as the Members may authorize, or may be deposited and maintained in the LLC name in such financial institution as the Members may designate.

ARTICLE III

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Management of the LLC;  
Duties and Restrictions Upon Members

Section 3.1 General.

The general management of LLC activities shall be performed and carried out by the Members collectively, each of whom shall have voting rights with respect to each action considered by the LLC. The value of each Member's vote shall be the same as that entity's allocable share of the LLC's profit or loss, as set forth in Exhibit "C".

Section 3.2 Management Fee and LLC Expenses.

Except as may be expressly provided in this Agreement or hereafter approved in writing by the Members, no compensatory payment will be made by the LLC to any Member, directly or indirectly, in exchange for services rendered to the LLC; however, each Member shall be entitled to reimbursement for all expenses incurred on behalf of the LLC, subject to reasonable substantiation as to amount and appropriateness.

Section 3.3 Restrictions on Activities.

No Member, without the written consent of each other Member, may make any decision or take any action concerning:

(a) acquisition or conveyance by the LLC of any land or any interest or estate therein;

(b) financing of or borrowing by the LLC;

(c) the making of any material capital improvement, repairs, alterations or changes not previously approved in writing by the Members;

(d) selecting or varying cost recovery and accounting methods, changing the fiscal year of the LLC and making other policy decisions with respect to treatment of various transactions for bookkeeping or tax purposes;

(e) approval of all construction and architectural contracts and all architectural plans, specifications and drawings prior to the construction of any improvement contemplated thereby upon the Business or any portion thereof (including, but not by way of limitation, any material changes, modifications or amendments to the above referenced

plans and specifications adding to the cost of construction of the Improvements;

(f) varying or changing any portion of the insurance program required by Article VII;

(g) determining whether or not distributions should be made to the Members;

(h) determination of the maximum and minimum working capital requirements of the LLC;

(I) the initiation, adjustment, settlement or compromise of any claim, obligation, debt, demand, suit or judgment against the LLC, or any Member if such concerns the LLC or the Business; and

(j) any other decision or action which by the provisions of this Agreement is required to be approved by the Members or which materially affects the LLC or the assets or operations thereof.

#### Section 3.4 Indemnification and Contribution.

To the extent allowable by law, no Member shall be liable for any act performed or indebtedness or liability incurred by another Member outside the scope of the LLC's business. Where liability attaches to any Member by reason of the unauthorized act, the Member committing such unauthorized act shall hold harmless and indemnify the other for any obligations or damages incurred, including any costs, expenses or fees incurred in the collection of such indemnification.

If any Member satisfies or reduces a LLC obligation using personal assets, the remaining Members shall be required to reimburse the subject Member for that portion of the amount so paid as the Member's respective percentage share of LLC profit and loss (as set forth in Exhibit "C" hereto) bears to 100%.

### ARTICLE IV

#### LLC CAPITAL

#### Section 4.1 Initial Contributions and Capital Amounts.

As an initial capital contribution, each Member shall contribute to the LLC, the assets set forth and described in Exhibit "B" hereto, on the time schedule also indicated therein.

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An individual capital account shall be established and maintained for each Member, to which contributions, additional capital assessments and individual shares of LLC profits shall be credited and allocable share of expenses, expenditures, depreciation, deductions, distributions and losses charged. To the extent practicable, the capital accounts of all Members shall be maintained in relation to one another in the same ratio in which the Members share in LLC profit and loss.

#### Section 4.2 Additional Capital Assessments.

No additional capital assessments will be made to the LLC without the written consent of the Members. Once such consent has been obtained, however, each such assessment, in the aggregate amount and form so authorized, will be of a mandatory nature and must be satisfied within 15 days after the furnishing of such consent. Each additional contribution will be prorated amount the Members in the same proportion as the share of LLC profit and loss allocable to each bears to the total percentage of LLC profit and loss represented by all contributing Members. The failure by any Member to timely satisfy the assessment will cause the additional amounts contributed by any other Member to be treated as a loan made in accordance with the provisions of Section 4.3 below. For purposes of the Sections that relate to capital assessments, it is understood that Incon Partners, Inc., may not be in a position to fund additional assessments and the repayment of any assessments advanced by other Members, will be treated as set forth in Section 4.3, below. Failure of Incon Partners, Inc., to fund an additional capital contribution shall not constitute a default, as provided in this Agreement, below.

#### Section 4.3 Loans by Members.

If following completion of the consent requirements set forth in Section 4.2 above, a Member fails to timely satisfy its share, such amounts as may be advanced to the LLC in partial or complete satisfaction of the requested assessment shall be treated by the LLC as bona fide loans made thereto. Each such loan shall be evidenced by a promissory note payable to the Member-creditor, due at the later of the next scheduled capital distribution or six (6) months. All such advances shall bear interest at an annual rate equal to one (1) percentage point in excess of the prime rate which is being charged, at the time of execution of the note by the Member to preferred commercial customers making 90 day loans, which rate shall be subject to adjustment on the first day of each calendar month. Interest so calculated shall be payable quarterly. The subject note may be executed on behalf and in the name of the LLC by the Member making such loan and such execution shall be for



all purposes as effective against and binding upon the LLC and the remaining Member as though such execution had been joined in by such Member. For such purpose, each Member does hereby irrevocably constitute and appoint the other Member as the true and lawful attorney in fact of such Member and the successors and/or assigns thereof, in the name, place and stead of such Member or the successors and/or assigns thereof, as the case may be, to make, execute and deliver the referenced note, under the conditions of and as contemplated by this Section 4.3. It is expressly understood, intended and agreed by each Member, for such Member and the successors and assigns thereof, that the grant of the power of attorney to each other Member pursuant to this Section is coupled with an interest, is irrevocable and shall survive the death, legal incompetency, liquidation or dissolution of such granting Member, as the case may be, or the assignment of the interest of such granting Member in the LLC. If such assessment notes are not retired within the time set forth therein or agreed to by the Members, the Member-debtor(s) risk dilution of their percentage interest in the LLC. For purposes of initial computation of LLC value relating to dilution, the parties agree that the company shall be valued at a factor of five (5) times a multiple of one hundred thousand dollars (\$100,000), or five hundred thousand dollars (\$500,000). Subsequent dilution, if necessary and proper, shall be based upon the value of the LLC, as agreed to by and between the parties using the valuation process set forth in Section 9.2, below. Dilution shall be based upon additional necessary capital assessments above the appropriate valuation, as pro-rated by each Member's respective share of the LLC as it relates to the overall assessment. No dilution shall occur or be permitted until three (3) full months of business have been completed following the tender of the first billing following receipt of the LLC's Medicare Group B., Provider Number or such other authorization allowing the LLC to seek reimbursement from the Medicare Program.

#### Section 4.4 Charges and Expenses.

Except as otherwise provided in this Agreement, all obligations incurred or sustained by, and all tax deductions and credits allowed or allowable to the LLC will be borne by each Member in the same ratio as its shares in LLC profit and loss.

### ARTICLE V

#### PROFIT AND LOSS

### Section 5.1 Determination and Allocation.

The annual or other periodic net profit or loss of the LLC shall be determined by deducting from gross LLC revenues from whatever source derived during the applicable period all LLC payments made or incurred (depending on the LLC's method of accounting) other than to Members in respect of their LLC interests, allocated to the Members in the proportions as are set forth in Exhibit "C" hereto and credited or charged, as the case may be, to their respective capital accounts.

### Section 5.2 Distribution.

Amounts of LLC cash or other liquid assets which the Members shall deem unneeded in respect of LLC operations, capital expenditures and debt service may be distributed to the Members in the same proportions as their respective profit and loss ratios and at such time(s) as they deem proper. Interest shall not be paid to any Member with respect to its original capital contribution, any additional assessment paid in, or the credit balance of its capital account.

## ARTICLE VI

### Additional Members

Additional Members may be admitted to the LLC at such times and on such terms as may be authorized by the Members.

## ARTICLE VII

### INSURANCE

#### 7.1 Minimum Insurance Requirements.

Unless otherwise approved by the Members (such as, for example, when any of the coverage contemplated below is carried for the benefit of the LLC and the Members by any general contractor providing services to the LLC), the LLC shall carry and maintain in force the following insurance, the premiums for all of which shall be a cost and expense in connection with the operation of the LLC:

(a) Once the LLC employs three or more persons, worker's compensation insurance (including employer's liability insurance) for an amount not less than that required by Florida State law covering all employees of the LLC employed in, on or about the Business, to provide statutory benefits as

required by Florida law.

(b) comprehensive general liability insurance (including protective liability coverage on operations of independent contractors engaged in construction and blanket contractual liability insurance) on an occurrence basis for the benefit of the LLC and the Members as named insureds against claims for personal injury liability, including without limitation, bodily injury, death or Business damage liability, with a limit of not less than \$500,000 per incident/\$1,000,000 aggregate in the event of personal injury to any number of persons or of damage to Business arising out of any one occurrence; such insurance, which may be furnished under a primary policy and a secondary umbrella policy or policies, shall also include coverage against liability for bodily injuries or Business damage arising out of the use by or on behalf of the LLC or the Members, of any owned, non-owned or hired automotive equipment for a limit not less than specified above;

(c) fire, extended coverage and vandalism and malicious mischief insurance on the completed Business in an amount not less than the aggregate outstanding balance of any construction loan and/or long term loan taken out by the LLC with respect to the Business or for such other amount (at no time, however, less than the aforesaid outstanding balance) as may be required to prevent the LLC and the Members from becoming co-insurers under the terms of the applicable policy and against such additional perils and for such amounts as may from time to time be required by any mortgagee providing funds for any long-term financing of the Business of any portion thereof, but in any event in an amount not less than one hundred percent (100%) of the then actual replacement cost of the Business (exclusive of excavation and foundation costs and costs of other similar underground items) without deduction for physical depreciation thereof, and such insurance on the completed Business shall contain the "Replacement Cost Endorsement";

(d) crime insurance in connection with all operations of the LLC and the business and affairs arising out of, or in connection with, the Business, the Improvements or other assets of the LLC.

(e) flood insurance in an amount equal to the replacement cost of the Business or the maximum amount of such insurance available, whichever is the lesser, if the Business is situated in an area now or subsequently designated as

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having special flood hazards as defined by the Flood Disaster Protection Act of 1973, as amended from time to time, and

(f) such other insurance, including but not limited to insurance on business income, as may be reasonably required by the Members or required by any mortgagee providing funds for any financing of the Improvements or any portion thereof.

## 7.2 Insured Parties.

All of the policies of insurance described in Section 7.1 (except in Item (a)) shall name the LLC and each of the Members as named insureds, as their respective interests may appear. All such insurance shall be effected under policies issued by insurers and be in forms and for amounts approved in writing by the Members.

## ARTICLE VIII

### Sale or Assignment of LLC Interest

#### Section 8.1 In General.

Except as provided in Article IX, no Member may sell, transfer, assign or otherwise dispose of, or mortgage, hypothecate or otherwise encumber or permit or suffer any encumbrance of, all or any part of the interest of such Member in the LLC unless approved in writing by the Members and any attempt to so transfer or encumber any such interest shall be void.

## ARTICLE IX

### Termination and Distribution

#### Section 9.1 Voluntary Termination.

At any time after the Business shows a net profit for a continuous sixteen (16) week period, any Member may withdraw from the LLC upon compliance with the provisions and conditions set forth below:

(a) The Member shall, at any time when there is not outstanding a promissory note issued by the LLC under Section 4.3 as a result of such Member's failure to make a contribution of capital to the LLC, have the right to withdraw from the LLC by providing the remaining Member (the "Offeree") with a written notice of such intention to withdraw and an

offer specifying a purchase price (the "Offer"). If the Business or any portion thereof has been damaged or if there is condemnation or other taking for a public purpose pending, the Offer shall state whether it is contingent upon the Business being fully repaired and whether the damages, condemnation or other taking has been taken into account in the calculation of the Offer. The Offer shall also specify whether it is contingent upon the Business being repaired and restored prior to the closing, or whether the offering Member will agree to accept title to the Business in an unrepaired or unrestored condition and an assignment of the insurance proceeds or condemnation award.

(b) Upon receipt of an Offer, the Offeree shall be obligated, in accordance with the provisions of this Section 9.1, to either (i) purchase the Business from the LLC at the stated purchase price, or (ii) on behalf of the LLC, make a counter-offer on such terms and conditions as the Offeree shall deem prudent. The Offeror shall have ten (10) days to accept or reject the counter-offer.

(c) Should the Offeror wish not to sell its shares for the price set forth in the counter-offer, it shall not be permitted to transfer said interest to another entity unless and until the following steps have been accomplished:

1. A Member may not transfer all or any portion of its interest in the LLC to any other entity without transmitting notice of such intention to both the LLC and the other Members with respect to any shares, or any portion thereof, that the Member proposes to transfer. "Offer" means the written notice by the Member specifying all of the following:

a. The Member's intention to transfer its interest;

b. The percentage of the Member's interest in the LLC that the Member proposes to transfer;

c. The name, address, and telephone number of the proposed transferee; and

d. The price that the transferee proposes to pay to the Member for the interest to be transferred, as well as all other terms and conditions of the proposed transfer.

Within 30 days after receipt of the Offer, the LLC may purchase all, or a percentage less than all, of the

interest proposed to be transferred. Such purchase shall be at the same price, and under the same terms and conditions, as the Offer.

(d) If the LLC fails to purchase the shares as provided herein, then the other Members may, within 45 days after receipt of the Offer, and at the purchase price and on the same terms and conditions as the Offer, purchase all or part of such interest of the LLC.

(e) If the shares offered by the transferring Member are not purchased by the LLC or by the other Members within the time periods specified above, the transferring Member may transfer its shares to the transferee, provided, however, that said transfer otherwise complies with any restriction on transfer contained in the LLC's articles of incorporation and/or bylaws and that the proposed transferee agrees to sign an agreement containing substantially the same terms as are contained in this Agreement.

(f) In the event that more than one Member wishes to purchase the interest offered by another Member, the interest offered and the purchase price herein shall be evenly divided between the Members that agree to purchase same.

(g) At the closing, the purchasing entity shall assume, by a legally enforceable agreement, the payment of any indebtedness under any mortgage or other lien or encumbrance set forth in the offer to the extent that the Members have personal liability therefor.

(h) If, on the date of the closing, the Business is subject to any mortgage or other lien or encumbrance not listed in the offer and if such either (i) is for taxes or assessments, or (ii) was approved by the Members or resulted from an action undertaken by the Transferor, the purchasing entity shall either discharge or take subject to such mortgage, other lien or encumbrance and reduce the amount of the cash portion and increase the amount of the noncash portion of the purchase price by an amount equal to the amount required, or which would be required, to discharge such mortgage, other lien or encumbrance.

(i) If, on the date of the closing, the Business is subject to any mortgage, other lien or encumbrance not listed in the offer, which is not for taxes or assessments, and not previously approved by the purchasing entity, then the purchasing entity shall either discharge or take subject to such mortgage, other lien or encumbrance and reduce the amount

of the purchase price by an amount equal to the amount required, or which would be required, to discharge such mortgage, or other lien or encumbrance; provided, however, that if the same cannot be discharged by immediate payment thereof, the purchasing entity may, at the sole option of the purchasing entity, cancel the purchase.

(j) If the Business is damaged by fire or other casualty, or if any governmental authority possessing the right of eminent domain shall give notice of an intention to take or acquire a substantial part of the Business, and such damage occurs or such notice is given between the date of an offer and the completion of liquidation proceedings pursuant to Section 9.3, then:

(I) if the Business is damaged by an insured casualty (or an uninsured casualty not resulting in substantial damage), or if the taking or acquisition shall not involve a substantial portion of the Business and shall not result in a substantial reduction in the income-producing capacity of the Business, then the Vendee shall be required to complete the transaction and accept an assignment of the insurance or condemnation proceeds; or

(ii) if the Business is damaged by an uninsured casualty resulting in substantial damage, or if the taking or acquisition shall result in a substantial reduction in the income-producing capacity of the Business, then the Vendee shall have the option to either (a) accept the Business in an "as is" condition together with any insurance proceeds, settlements and awards, or (b) cancel the purchase, in which event the terms of this Agreement shall remain in effect and continue to be binding on the Members, and the Vendee shall release the option granted to Subsection (f) of this Section.

(iii) in the event that the taking or acquisition shall result in a substantial reduction in the income-producing capacity of the Business, notwithstanding the election of the Vendee pursuant to Paragraph (ii) of this Subsection (o), the Vendor shall also have the right to cancel the purchase. In the event that the Purchase is canceled by either the Vendor or the Vendee, the terms of this Agreement shall remain in effect and continue to be binding on the Members as tenants-in-common with

appropriate modifications of this Agreement and the Vendee shall release the option granted pursuant to Subsection (f) of this Section.

Section 9.2 Involuntary Termination.

For purposes of this Article IX, an "Event of Dissolution" means:

(a) the death of any individual who may hereafter become a Member;

(b) unless approved by the Members, the dissolution or termination of any LLC or corporation which is or shall hereafter become a Member;

(c) the declaration of any individual future Member or any individual sole remaining general Member of any LLC which shall hereafter become a Member as legally incompetent, or a showing that such person is of unsound mind;

(d) the showing by competent medical evidence that any individual Member or any individual sole remaining Member of any LLC which is or shall hereafter become a Member is mentally or medically unable to perform the duties required of such person by the LLC;

(e) the disappearance of, or lack of ability to contact, any Member (including the chief operating officer of a corporate Member) for a period of ninety (90) days or more; or

(f) the occurrence of any one of the following events: if any Member (including the principal stockholder of a corporate Member) shall:

(1) file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent, or shall file a petition or answer seeking any reorganization arrangement, composition, readjudgment, liquidation, dissolution or similar relief for such Member under the present or any future federal bankruptcy law or any other present or future applicable federal, state or other statute or law relative to bankruptcy, insolvency or other relief for debtors, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver, conservator or liquidator of such Member or of all or any substantial part of such Member's properties or interest in the LLC (the term "acquiesce" as used herein includes,



but is not limited to, the failure to file a petition or motion to vacate or discharge any order, judgment or decree within fifteen (15) days after the date of such order, judgment or decree);

(2) have a judgment or decree entered by a court of competent jurisdiction approving a petition filed against any Member seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy act or any other present or future applicable federal, state or other statute or law relating to bankruptcy, insolvency or other relief of other relief for debtors, and such Member shall acquiesce in the entry of such order, judgment or decree or such order, judgment or decree shall remain un-vacated and un-stayed for an aggregate of sixty (60) days (whether or not consecutive) from the date of entry thereof, or any trustee, receiver, conservator or liquidator of any Member or of all or any substantial part of such Member's Business or interest in the LLC shall be appointed without the consent of such Member and such appointment shall remain un-vacated and un-stayed for an aggregate of sixty (60) days (whether or not consecutive), whether or not such Member shall acquiesce thereto;

(3) admit in writing an inability to pay the debts thereof as such debts mature;

(4) give notice to any governmental body of insolvency or pending insolvency or suspension of operations; or

(5) make an assignment for the benefit of creditors or take any other similar action for the protection or benefit of creditors.

An Event of Dissolution will cause the termination of the LLC only if the remaining Members shall so decide, which decision of the remaining Members shall be manifested, if at all, by notice to the Member involved in the Event of Dissolution (the "Event Member") within thirty (30) days from and after the date that the remaining Members become aware of such Event of Dissolution. Upon the occurrence of an Event of Dissolution and the decision of the remaining Members to dissolve, terminate and wind up the LLC the Event Member shall immediately cease to be a Member and the remaining Members may send such notice or other advice of the

dissolution to each such person as the remaining Members may deem appropriate and necessary under the circumstances.

The remaining Members shall settle the business of the LLC as expeditiously as its nature will permit and account for the interests of the Members. Such settlement procedure may include, but shall not be limited to, a purchase by the remaining Members of the interest of the Event Member in the Business and other assets of the LLC immediately prior to the dissolution thereof at a price determined in accordance with an appraisal or appraisals of the interest of the Event Member made by a nationally recognized accounting firm and a generally recognized competent business appraiser in the area, selected by the remaining Members, a public sale of all or any part of the assets of the LLC or a winding up of the LLC.

The good will of the LLC (including the name, records and files) shall belong to and be vested in the remaining Members.

The prior written consent of the remaining Members shall be required prior to any consent to any administration of the Business by any referee, trustee or court of bankruptcy. The remaining Member shall have the right at all times to continue the business and affairs of the LLC.

Section 9.3 Procedure for Liquidation - Voluntary Termination.

Effective upon the termination of the LLC pursuant to notice as provided in Section 9.1, the LLC shall be deemed dissolved and the Members shall also deposit in escrow, under the same escrow agreement required pursuant to Subsection (g) of Section 9.1 (but without interest), their pro-rata share of such funds as are necessary to wind up the business and affairs of the LLC, pay all debts and obligations of the LLC (other than a mortgage or mortgages which are to be assumed by the Vendee or subject to which the Vendee is taking title) and distribute the assets (other than the Business). The expenses of the escrow administration shall be expenses of the LLC. The winding up of the LLC and the termination of the business and affairs of the LLC shall be conducted by the Members jointly only if dissolution occurs pursuant to Section 9.1. During the period of such winding up, the business and affairs of the LLC shall be conducted so as to maintain and preserve the assets of the LLC in a manner consistent with the winding up of the affairs thereof.

Section 9.4 Default

98 FEB 17 9:00  
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SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

98 FEB 11 AM 9:00 FILED  
SECRET  
TALLAHASSEE  
FLORIDA

If any Member fails to perform any of the obligations thereof under this Agreement, or violates the terms of this Agreement, such Member shall be a Defaulting Member and the Nondefaulting Members shall have the right to give such Defaulting Member a notice specifically setting forth the nature of the default and stating that such Defaulting Member shall have a period of fifteen (15) days to pay any sums of money specified therein as due and owing to the LLC or to any Member or thirty (30) days to cure any other default specified. If the monies specified are not paid within such fifteen (15) day period or such Defaulting Member does not cure all other defaults within such thirty (30) day period, or, if such other defaults are not capable of being cured within such period, such Defaulting Member has not commenced in good faith the curing of such other defaults within such thirty (30) day period and does not thereafter prosecute to completion with diligence and continuity the curing thereof, the Nondefaulting Members shall have all rights provided in Subsections (1) through (3) of this Section:

(1) to bring any proceeding in the nature of injunction or other equitable remedy, it being acknowledged by each of the Members that damages at law may be an inadequate remedy for a default or threatened breach of this Agreement.

(2) to bring any action at law or on behalf of the LLC or the other Member as may be permitted in order to recover damages, but such damages may be recovered only from, and only to the extent of the interest of, the Defaulting Member in the Business and the assets of the LLC.

(3) to institute such proceedings (including but not limited to the right to purchase the interest of the Defaulting Member pursuant to Section 9.2) as may be appropriate to secure an accounting and to dissolve, wind up and terminate the LLC.

Section 9.5 Procedure for Liquidation - Involuntary Termination or Default.

In the event of a liquidation and distribution as a result of the occurrence of an Event of Dissolution or a default pursuant to Section 9.4, the Event or Defaulting Member, as the case may be, shall have no power or authority to bind the LLC or the Members but shall assist the remaining Members in the dissolution and winding up of the LLC and the distribution of the assets thereof. Upon such distribution and winding up, the Members shall be relieved of all obligations hereunder except for obligations, duties or rights which have not been determined or ascertained as of the date of such termination and for rights or remedies which a Nondefaulting

Member may have against a Defaulting Member in law or equity.

## ARTICLE X

### MISCELLANEOUS PROVISIONS

#### Section 10.1 Independent Activities.

Notwithstanding the existence of this agreement, any Member may engage in any additional activities, whether or not competitive with the activities of the LLC, without having or incurring any obligation to offer any interest in such other activities to any other Member; and as a material part of the consideration for the execution of this agreement, each Member hereby waives, relinquishes and renounces any such right or claim or participation.

#### Section 10.2 Notices.

All notices, requests or other communications under this Agreement shall be in writing and shall be considered as properly given or made if hand delivered, mailed by the United States Postal Service from within the United States by registered or certified mail, postage prepaid and return receipt requested, or sent by prepaid telegram, and addressed to the location set forth in the preamble to this Agreement or to such other address as any Member may have designated by like notice furnished to all other parties hereto. All notices, except notices of change of address, shall be deemed given when mailed or hand delivered and notices of change of address shall be deemed given when received.

#### Section 10.3 Good Faith Activities.

The doing of any act or the failure to do any act by any Member, the effect of which may cause a result in loss or damage to the LLC, if done pursuant to advice of legal counsel employed on behalf of the LLC, or if done in good faith to promote the best interests of the LLC, shall not subject the Member to any liability.

#### Section 10.4 Binding Agreement.

Each of the provisions and agreements herein contained shall be binding upon and enure to the benefit of the parties hereto and their respective legal representatives, heirs and assigns.

#### Section 10.5 Entire Agreement.

FILED  
FEB 17 AM 9:00  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

This Agreement and attached exhibits constitutes the entire understanding of the parties hereto with respect to the subject matter hereof, and no amendment, modification or alteration of the terms hereof shall be binding unless the same be in writing, dated subsequent to the date hereof and duly approved and executed by each Member.

FILED  
98  
JAN 10 1998  
STATE OF FLORIDA

Section 10.6 Severability.

Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatever, such illegality or invalidity shall not effect the validity of the remainder of this Agreement.

Section 10.7 Headings.

The headings of this Agreement are inserted for convenience and identification only, and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof.

Section 10.8 Application of Florida Law.

This Agreement, and the application or interpretation thereof, shall be governed exclusively by its terms and by the laws of the State of Florida. Litigation of disputes shall be determined as per the mandates set forth in Section 11., below.

Section 10.9 Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 10.10 Words Used.

Where appropriate, words used in this Agreement in the singular shall include the plural and in the plural the singular, and words used in any particular gender shall include all others.

ARTICLE XI

Arbitration and Mediation

In the event of any dispute between the parties, the Members agree to refer said dispute to a certified mediator in an effort to reach conclusion. The adverse parties agree to evenly divide the costs of mediation. If mediation is unsuccessful, either

party may refer the dispute to the American Arbitration Association for binding arbitration. The finding of the arbitrator shall be final (subject to appeal rights within the American Arbitration Association system) and may be referred to the appropriate court of competent jurisdiction for judgment to be entered thereon. The unsuccessful party shall be assessed the successful party's attorney's fees and costs as an element of damages.

ARTICLE XII  
EFFECT OF DILUTION

If Incon Partners, Inc., is diluted to an ownership of ten percent (10%) or less at any point, the LLC agrees to hold that Member harmless and indemnify it for any and all guarantees (corporate or personal granted by its shareholders) for LLC purposes.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth in the preamble hereto.

Members:

Incon Care Group, L.L.C.,  
a Tennessee Limited Liability Company

BY: W. Barry Bodine

ITS: Pres.

Incon Partners, Inc., a Florida Corporation

BY: [Signature]

ITS: PRESIDENT

EXHIBIT B  
CAPITAL CONTRIBUTIONS

FILED  
98 FEB 17 AM 9:00  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

<u>Member</u>	<u>Character and Amount of Capital Contribution</u>
Incon Care Group, L.L.C.	\$70,000.00 capital
Incon Partners, Inc.	\$30,000.00 intangible contribution

EXHIBIT C  
PROFIT AND LOSS RATIOS

<u>Member</u>	<u>Percentage Interest</u>
Incon Care Group, L.L.C.	70%
Incon Partners, Inc.	30%

FILED  
FEB 17 AM 9:00  
SECURITY  
FBI  
TALLAHASSEE, FLORIDA



**AFFIDAVIT IN COMPLIANCE WITH 608.407, FLORIDA STATUTES FOR THE**  
**ARTICLES OF ORGANIZATION OF FLA-INCON, L.C.**

FILED  
98 FEB 17 AM 9:00  
TALLAHASSEE, FLORIDA  
SECRETARY OF STATE

**COUNTY OF DADE**

**STATE OF FLORIDA**

Michael J. Gerber, after being duly sworn, states the following:


1) My name is Michael J. Gerber and I am the individual that has executed the Articles of Organization for the above referenced limited liability company. I am a manager named in the Articles of Organization.

2) This affidavit is based upon my personal knowledge.

3) I have been authorized to execute this affidavit by all members of the company.

4) FL-INCON, L.C., has two members. The actual amount of cash contributions is \$70,000. The agreed value of the non-cash contributions equals \$30,000 and consists of intangible contribution such as prior work and specific market knowledge. It is anticipated that \$100,000 will be contributed in cash and/or property by the members.

5) Further affiant sayeth not.

  
Michael J. Gerber

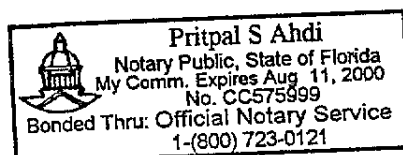
**STATE OF FLORIDA**

**COUNTY OF DADE**

BEFORE ME, a Notary Public, personally appeared Michael J. Gerber to me known as the person executing this affidavit who did not take an oath.

WITNESS my hand and official seal at Dade County, Florida, this 20 day of January, 1998.

My commission expires: Aug 11, 2000



  
NOTARY PUBLIC