

DEMPSEY, ROBERTS & SMITH, LTD.

ATTORNEYS AT LAW

1130 WIGWAM PARKWAY ♦ HENDERSON, NEVADA 89074
(702) 388-1216 TELEPHONE ♦ (702) 388-2514 FACSIMILE

www.drsltd.com

JOSEPH F. DEMPSEY
KENNETH M. ROBERTS
DAVID B. MATHENY

DAVID E. KRAWCZYK
KRISTYN J. TRAVIS

EDUARDO J. RIVERA
SHAUN P. HALEY

OF COUNSEL:
BILLY SMITH, JR.

INSTRUCTIONS AND INFORMATION REGARDING FORMING A NEVADA CORPORATION

When completing the Corporation formation documents, you will have two (2) options. You can complete the documents on the NV SOS web page Silver Flume, following the instructions I have provided below. I recommend you print these instructions I have sent you so you can use them as a reference when completing the Corporation formation documents on Silver Flume. Your other option is to go to the Nevada (NV) Secretary of State (SOS) web site. On the home page you will see the State Seal for the State of Nevada. There is a small white box to the right of the State Seal and there I a small magnifying glass in the right hand portion of the white box. In that white box, type in Articles of Incorporation, and then click on the little magnifying glass. Then double click on the first search results that appear, which reads Articles of Incorporation. The Instructions for completing the documents will appear first, which you should read before you get started completing the forms. After reading the Instructions, you should scroll down to the next page and to get started completing the documents. You will see a form entitled Articles of Incorporation. Print these instructions, so you can refer to them while completing the forms needed to form a NV Corporation. Once you have completed the documents, you can print, sign, date and mail them to the NV SOS. Needless to say, you will need to have a printer available for you to do that.

For # 1, **Name of Corporation:** (must contain approved corporation wording: see instructions) This is where you are going to type the name of your corporation. If you have not done so yet, please check with the SOS to verify if the name you have chosen is available. Once you have verified the availability of the name, type it in #1. You will however need to have some sort of corporate designation associated with the name. In Nevada you can use: Incorporated, Inc., Limited, Ltd., Company, Co., Corporation, Corp. You can place a comma between the name of your Corporation and the corporate designation if you like, but that is strictly your choice, it is not a requirement.

For #2, **Registered Agent for Service of Process** (check only one box): You can be your

own Registered Agent For Service of Process, (RAFSOP), if you reside in Nevada on a permanent basis. There is no need to hire a RAFSOP at an annual cost of approximately \$175.00. However, you may not use a Post Office Box or a Mail Boxes Etcetera type of company which offers mail box services. You have to use an address where you are physically present on a regular basis. If you have an office where you will be conducting your business, you may of course use the address of that office. Many people mistakenly believe they have to hire an attorney or a company offering RAFSOP services, but that is not the case at all, just so long as you are a Nevada resident. However, if you are **NOT** a Nevada resident, then you will have to hire an attorney or a company to act as your RAFSOP. PLEASE NOTE: Our firm, Dempsey, Roberts & Smith, Ltd., does **NOT** offer RAFSOP services, and we do not recommend one RAFSOP over any others. If you are going to be your own RAFSOP, you should check the box labeled **Noncommercial Registered Agent**, and then you need to write your name and put the address you intend to use. You can always change that address at a later date if you would like. (As an example, you would like to form the Corporation right away, but you have not yet chosen an office location). Just put your home address, and if you get an office address by the time your Corporation needs to be renewed the following year, just put the new address on the **ANNUAL LIST OF OFFICERS AND DIRECTORS** which the NV SOS will send you. For the Mailing address on # 2, if it is the same as the address you have written above, just write "SAME AS ABOVE". If it is different, then you would of course provide that mailing address.

For # 3, **Authorized Stock** (number of shares corporation is authorized to issue): It asks the Number of shares with par value: (Note: "par value" just means the minimum price stock can be sold for). So if you indicate par value of the stock will be \$1.00, one share may be sold for \$1,000.00, but could never be sold for .99¢ or less. Next it asks: Par value per share: This is where you would state you want the stock to have par value. You may assess a par value for the stock, but you certainly are not required to do that. And, finally it asks: Number of shares without par value. This is where you would indicate the number of Shares without par value. When deciding how many shares the Corporation should authorize, just be aware, for the standard filing fee, you can authorize a maximum of 75,000 shares. I recommend you authorize that many shares for the Corporation, because you never know when you might need additional shares. You may of course authorize more than 75,000 shares, however the fee charged for filing the Corporation increases. If you do want to issue more than 75,000 shares, please see fee schedule in the documents that follow.

For # 4, **Names and Addresses of the Board of Directors/Trustees:** (each Director/Trustee must be a natural person at least 18 years of age: attach additional page if more than two directors/trustees): This is where you list the name(s) and address(es) of the Director(s). You must have at least one Director, but may have more. I do not recommend having an even number of directors, i.e. 2, 4, 6, etc. because at Director meetings, Annual and Special, each Director has one vote only. Having an even number of Directors creates the potential for a dead lock when voting. Appointing an odd number of Directors eliminates that possibility.

For # 5, **Purpose:** (optional: required only if Benefit Corporation status selected). You may state the purpose of the corporation , but do not have to. What I always state as the purpose of the corporation is: To conduct all legal business whether within or outside of the State of Nevada. That is about as broad a statement as you can have.

For # 6, **Benefit Corporation:** (see instructions). Please Note: A Benefit Corporation is a for profit corporation, the purpose of which is to benefit society and the environment. Very few corporations would qualify as Benefit Corporations.

For #7, **Name, Address and Signature of Incorporator:** (attach additional page if more than one incorporator). This is where you provide the name and address of the person who is Incorporating the Corporation. This may be you, or it may be someone else who wants to be recognized as the Incorporator. Be sure to sign at the **X**.

For #8, **Certificate of Acceptance of Appointment of Registered Agent:** This is where the RAFSOP signs the Articles of Incorporation. Be sure to sign at the **X**.

Scroll down to the next page which is titled **(PROFIT) INITIAL/ANNUAL LIST OF OFFICERS, DIRECTORS AND STATE BUSINESS LICENSE APPLICATION OF:** On the first line, where it is asking for the name of the Company, you will need to again type the Complete name of the Company.

Next it will ask, FOR THE FILING PERIOD OF _____ TO _____. If for example, you formed your Corporation on January 15, 2020, you would write that information in the fist box and then in the second box, you would write January 14, 2021. (But you need to make sure you use the actual date you formed the Company, and not the example I just provided).

Next you need to check the box, Return one file stamped copy.

Next it states: **IMPORTANT:** Read instructions before completing and returning this form. **PLEASE NOTE: YOU NEED TO READ THE EIGHT (8) ITEMS THAT ARE PROVIDED.**

Following the instructions, it states: **CHECK ONLY IF APPLICABLE AND ENTER EXEMPTION CODE IN BOX BELOW** Only check the box below if you are a Government Entity or an Insurance Company. It will be very unlikely you will be able to qualify for an exemption for filing the State Business License fee.

Below that there is a small box and to the right of that it states: “This corporation is a

publicly traded corporation. The Central Index Key number is: The box to the right of that is where you enter the Central Index Key number. Below that is a box and to the right of that it states: This publicly traded corporation is not required to have a Central Index Key number. If your corporation will **not** be publicly traded, then you can ignore these two boxes.

Next, type the Name(s) and Address(es) of the Officers of the Corporation, the President, Secretary & Treasurer. Although the Initial List of Officers and Directors does not provide space for you to list the name(s) of Vice President(s), you should attach a sheet to the Initial/Annual List if you want to designate one (1) or more Vice President(s) of the Corporation. You certainly do not need to appoint Vice President(s), but you may if you wish. It should be noted, the same person can fill all of the Officer positions, including that of Vice President. But if the same person is appointed President, Secretary, and Treasurer of the Corporation, it would be unnecessary to have that person also be Vice President.

Next, you need to provide the Name(s) and Address(es) of the Director(s) of the Corporation. There is space for only one Director on the form. If the Corporation is to have more than one (1) Director, you need to attach a sheet to the Initial/Annual List, providing the Name and Address of each additional Director. Note: One person can be RAFSOP, all of the Officers and the single director of a Corporation.

There are two paragraphs, in small print, that follow the space where the Name and Address of the Director goes. **YOU NEED TO READ THOSE PARAGRAPHS.**

Below that, be sure to sign the document and provide your title as either President, Vice President, Secretary or Treasurer, of the Corporation, as applicable, in the box to the right, and then insert the date you signed the document in the box to the right.

Scroll down to the next document entitled **REGISTERED AGENT ACCEPTANCE** (Pursuant to NRS 77.310)

Below that you will find the following language: **Certificate of Acceptance of Appointment by Registered Agent.**

Below that, it states: In the matter of In the box provided to the right, you again type the complete name of the Company.

Below that it states: **I** (There will be a box provided where you type in the Name of Appointed Registered Agent OR Represented Entity Serving as Own Agent. If an entity is serving as the RAFSOP, type in the name of that entity, otherwise just type in the name of the individual acting as the RAFSOP). **am a:**

Below that you will find three (3) options and you need to select **only** one.

- a) **commercial registered agent listed with the Nevada Secretary of State.**
- b) **noncommercial registered agent with the following address for service of process:**

If you will be acting as your own RAFSOP, check box **b** and provide your complete address.

- c) **represented entity accepting own service of process at the following address.** Only applies if a domestic or foreign entity will be the RAFSOP. (If you plan to be your own RAFSOP, you will select box **b**, and therefore ignore this option)

You will then sign and date the document. Sign at the **X** above the language: **Authorized Signature of R.A. or on behalf of R.A. Company.**

Scroll down to the next page entitled **Customer Order Instructions**. In the box with the language "Processing Service Required", you will find 2 options. Regular and 24-Hour Expedite (additional fee included). Be sure to check the box that applies. If you are not in a rush to get your corporation formed, just check the box in front of the word Regular.

Below that you will again type in the complete name of your Corporation, and again provide the Date.

Below that you will see the language Return to: In that box provide your mailing address.

Below that, you will see Contact Name: This is where you type in your name and to the right of that type your Phone number in the box provided.

Below that you will see the words **Return Delivery:** (email or fax options do not receive a copy via mail, must be ordered Separately).

Below that you will see the following options: Email to: with a box to the right where you can provide your email address. You should check that box and type your email address **only** if you want the filed documents sent to you via email. To the right is: Fax to: and a box is provided where you can type your facsimile number. Use that option **only** if you want your documents sent to you via facsimile.

Below that you will see the following options: Hold for Pick up; Mail to Address Above; FedEx: Acct#; and Other (explain below). Just be sure to check the box for the option you want. If you want to have the file stamped documents mailed to you, just check Mail to Address Above.

Below that you will see the words Order Description: (include items being ordered and fee breakdown) Please be sure to read the language following the asterisk (*), which is found below the Order Description box.

In the box provided, type “Filing of Articles of Incorporation for a Nevada Corporation”. Then space over about 10 spaces. Do not try to tab over as that will take you to the bottom of the page. After spacing the 10 spaces, type \$75.00. Then hit the enter key twice.

Then type “Certification of Articles of Incorporation for a Nevada Corporation ”. Then space over until you are directly under the \$75.00 and type \$30.00.

Below where you have typed that information, to the right you will see the language Total Amount: You need to type \$105.00 in the box provided.

Below that you will see Method of Payment. Check/Money Order; Credit Card (attach ePayment checklist); Trust Account; and Use balance remaining in job #. Just select the method you wish to use.

Congratulations! You are done. In addition to the \$105.00, you will need to pay \$125.00 to file the Initial/Annual List of Officers, Directors. And an additional \$200.00 for the State Business License. The total fees with the NV SOS for filing the Articles of Incorporation are \$430.00.

Once you have received confirmation from the NV SOS your Corporation has been formed, go to the web site www.attorneyscorpsservice.com to order your Corporate Kit. These are not expensive, approximately \$75.00 to \$100.00. You can order a brown binder with gold lettering, (a little more expensive) or a black binder with white lettering, (a little less expensive). However, make sure the Kit you order comes with Bylaws. If it does not, then be sure to order the Bylaws for an additional nominal fee. It will be well worthwhile doing that. I also recommend you order a metal crimper for the Corporate Seal instead of a rubber stamp. There will also be an additional nominal fee for the metal crimper.

Your Corporate Kit will come with Stock Certificates, which you will need to complete. At the bottom of the Certificate you will find a colored disk, which is printed in the same color ink as the Certificate. The Kit also comes with gold counter foils. You need to paste a gold counter foil over the colored disk at the bottom of the Certificate and then crimp it using the metal crimper. Doing that makes the Certificate look more formal, as that gold counter foil will have the Corporate Seal embossed upon it.

Once you receive your Kit, you will find a CD. Put that into your computer and complete all of the documents you find on the disk, with the specific information relating to your Corporation. In the Bylaws be sure to indicate the date and time for the Annual Shareholder and Director Meetings and the number of shares that each Shareholder has been issued. If there are only two (2) Shareholders, and they are not husband and wife, you may issue an equal number of shares to them. However, in that event, I recommend that each Shareholder select a neutral third party they both trust who will be issued a nominal number of shares, to act as the tie

breaker for any disagreements that may arise between the majority Shareholders at Shareholder Meetings, both Annual and Special . So, as an example, each Shareholder is issued 500 shares and the neutral third party is issued two (2) shares. This neutral third party will only have a voting interest in the Corporation, but not an economic interest. You will need to add a paragraph to the Bylaws which states the Shareholders who have a majority interest in the Corporation are entitled to a 50/50 economic interest, but not an equal voting interest in the Corporation.

Before deciding how many shares to issue to the Corporation's Shareholder(s) at the Initial Meeting of the Board of Directors, be sure to first consult with a good CPA to get advise on that. By keeping the initial number of shares being issued low, that could have potential financial benefits for the Shareholders in the future. So be sure to consult with a good CPA first.

Once you have formed your Corporation with the NV SOS, it will be considered a C-Corporation. However, you may want to have your Corporation become a Sub-S Corporation, for tax purposes. Before you decide to do that, please first consult with a good CPA for advice. If the CPA recommends that your Corporation should be taxed as a Sub-S Corporation, your CPA can assist you with preparing and then filing the required 2553 Form with the Internal Revenue Service. While you are at it, you should have your CPA also fill out IRS SS-4 Form. This is the form that is used to establish an Employer Identification Number (IN) for your Corporation.

Please be advised, Nevada law requires Corporations to have Annual Meetings of the Shareholder(s) and Directors. At a minimum, at the Annual Meetings of Shareholder(s), he/she/they must elect the members of the Board of Directors for the ensuing year. And, the Board of Directors must, at a minimum, elect the Officers of the Corporation for the ensuing year. Those Meetings must then be reduced to Minutes, which should be inserted into the Corporate Kit under the section labeled "Minutes". When deciding which dates to put in the Corporation's Bylaws for the Annual Meetings of Shareholder(s) and Directors, just be aware, I do not recommend selecting a specific date, such as the 20th of January. Instead, I recommend you pick a day of the week, such as the third Wednesday of January; the Second Tuesday of January, etc. That way, your Annual Meetings will always be on a weekday.

You should be aware that in addition to Annual Meetings of Shareholder(s) and Director(s), they should also occasionally have Special Meetings when situations warrant it. As an example, if the Shareholder(s) and Director(s) of the Corporation is/are thinking about expanding into the international arena, the Shareholder(s) and Director(s) should have a Special Meeting and vote on whether to hire an international market analyst to evaluate that market for the corporation. That Meeting should then be reduced to Minutes. You should be able to find a sample of Special Meeting Minutes in the Corporate Kit. After the analyst conducts his evaluation and recommends expanding into the international arena, the Shareholder(s) and Director(s) would then have another meeting to vote on whether to hire an international market strategist to advise what would be the best way for the Corporation to enter into the international

arena. That Meeting also needs to be reduced to Minutes. The Shareholder(s) and Director(s) of the Corporation would not need to have additional Special Meetings until circumstances again warrant it. If the Corporation has only one (1) Shareholder and one (1) Director, I realize it may seem odd that **only** one person is to have a Meeting with him or herself, to vote on important decisions that affect the Corporation and then reduce that Meeting to Minutes. But you need to keep in mind, you have formed a corporation, so it is important that you follow **Corporate Formalities**, and act as a corporation would act, and not act as an individual.

It is very important to have a Corporate Kit with all of the documents that comes with it and to have Annual and Special meetings of the Shareholder(s) and Director(s) when warranted. I suggest you also keep all of your other important corporate documents in the Kit, such as your IN application, the appropriate business licenses, etc. Even if the Corporation has only one (1) Shareholder and Director, they still need to follow Corporate Formalities and have Annual and Special Meetings and vote on important issues that concern the Corporation.

If the Shareholder(s), Director(s) and Officer(s) of the Corporation does/do not follow Corporate Formalities, two (2) unpleasant issues may arise. If the Corporation is sued and the Plaintiff's attorney asks to see the Corporate Kit and you do not have one, the attorney will probably return to Court and ask permission to amend the Complaint to sue not only the Corporation, but also the Shareholder(s) in his/her/their individual capacity. That is called **PIERCING THE CORPORATE VEIL**. Granted, it is much more difficult to Pierce the Corporate Veil in Nevada than it is in other States, but it is not impossible. If the Shareholder(s) has/have not followed **any** Corporate Formalities, then the Court would have no choice other than to allow the corporate veil to be pierced.

The other unpleasant thing that may happen is if the IRS conducts an unannounced audit of your Corporation, (which it does from time to time), and asks to see your Corporate Kit, and you do not have one, the IRS will conclude that despite the fact you claim to have been operating your business as a Corporation, as an actual matter of fact, you have not been, because you have not followed Corporate Formalities. If the IRS comes to that conclusion, they will determine on what date the Corporation was first formed, and starting from that date, will reassess the tax obligation of your Corporation. The Corporation would be taxed as a **Sole Proprietorship**, rather than a corporate entity. The IRS would therefore require you to pay 15% self employment tax, plus the difference between the amount you were taxed at as a corporation and the amount you should have been taxed at as a Sole Proprietorship. That additional tax obligation might create quite a financial burden on your Corporation.

Next, you need to decide where the Corporation's principal place of business will be located. If you will be conducting business in a County in Nevada, and not within a City, then you may need to obtain a County Business License. If you will be conducting business in an Incorporated City in Nevada, you may need to obtain a City Business License, but please **do** confirm that with that City's Business and Licensing Department. If you plan to conduct business from your home, you need to inquire if the County or City requires you to obtain a Home Based Business Exemption.

If you are going to be conducting business in Clark County, then you would need a Clark County Business License, only. If you will be conducting business in Las Vegas or N. Las Vegas or Henderson, etc., then you will need a Business License for that jurisdiction only. If you will be conducting business all over the Las Vegas Valley, an example being an insect exterminator, then you will need a multi jurisdictional license. In the event your primary place of business is the City of Las Vegas, you would go to the Las Vegas City Business & Licensing Department and advise them you need a multi jurisdictional license and they will provide you with information on how to obtain that license. So you must apply for that multi jurisdictional license in the jurisdiction where you will be primarily conducting business.

If you plan to operate your business out of your home, you first need to determine in which jurisdiction your home is located, Clark County, City of Las Vegas, etc. Once you make that determination, you may apply to the Business & Licensing Department for that jurisdiction, for the home based business exemption. There is certainly no guarantee you will be granted that exemption to be allowed to operate your business from your home, but you certainly may apply nonetheless. If you are denied a license to operate your business from your home, you will have to find a location zoned commercial, from which to conduct your business.

When you apply to the Business & Licensing Department for whatever jurisdiction which is applicable in the Las Vegas, Valley, you will be given additional forms to complete, such as a Workman's Compensation Insurance acceptance or waiver form. If you are planning on employing people, you cannot waive that Insurance, you will have to apply for it. If the operation of your business does not require you to have employees, and you do not need to cover yourself with that type of insurance, then you may waive that insurance.

Before you arrive at the conclusion that those individuals who will be providing services to your Corporation are 1099 Independent Contractors rather than employees, I recommend you first review the twenty (20) Factors the IRS uses to determine if an individual is indeed an Independent Contractor or is an employee. You may find those 20 Factors at the IRS website. Please Note: If you guess wrong, it could cost your Corporation quite a bit of additional taxes at a later date. If you are uncertain about whether individuals providing service to your Corporation could be classified as Independent Contractors, I suggest you consult a good CPA.

Another form you will be given to complete is the Child Support Compliance Form. Since you are forming a Corporation, you may check the box waiving the requirement to report your compliance with a Child Support Order.

Those are just a sample of the types of forms you will be required to complete and submit to the Business & Licensing Department in the jurisdiction where you will be conducting business.

Once your Corporation has been formed and is actually conducting business in

Nevada, you should visit the NV SOS web site again and apply for a Trade Name Registration. The form you will use is called a Trade Name, Trade Mark and Service Mark Registration. However, you will only fill out that portion of the application which pertains to Trade Name Registration. When submitting that application to the NV SOS, you will need to include the Corporation's letter head, an invoice and a business card. It is very inexpensive to register a Trade Name in Nevada - \$100.00 for the first 5 years and \$50.00 for every subsequent 5 years. The Trade Name Registration applies to the entire State of Nevada.

By now you are probably wondering, why would I need to register my Corporation's Trade Name? I have a Corporate Charter issued by the NV SOS with the name of my Corporation on it. Wouldn't that be sufficient? You certainly would think so, but unfortunately such is not the case. Anyone can apply for a Trade Name Registration in the name of your Corporation and the request would more than likely be granted it, even if the application for it is submitted after the SOS has issued a Corporate Charter to you. Logic would dictate that the SOS would compare the Trade Name Registration application with the names of existing companies in its data base and if there was a match, they would tell the applicant sorry that name is taken. But the sad fact is, the SOS will issue a Trade Name Registration, in the name of your Corporation, to whoever applies for it first. Shouldn't that be you? Very few people know about this, which is why I am taking the time to inform you about it now. But remember, you must actually be conducting business in NV, using the name you are applying for, before you can file for the Trade Name Registration.

I am frequently asked why not just file a doing business as (d.b.a.), wouldn't that be just as good? The problem with a d.b.a. is, it is valid **only** in the County (such as Clark) where it is filed. The Trade Name Registration on the other hand, covers the entire State. In addition, if you file a d.b.a. on January 2, 2019 and someone else files a Trade Name Registration on January 2, 2020, that subsequent filing will take precedence over your d.b.a. filing.

It should be noted, if you use the name of your Corporation in commerce in Nevada, before anyone else does, you will have established a common law trade name usage in this State. If someone were to file a Trade Name Registration with the NV SOS for that name and then tells you to quit using that name or they will sue you, I am confident you would win if they do actually sue you. You might be thinking, so then what is the problem? The problem is, it might cost you \$10,000.00 or more in attorney's fees and costs, and require quite a bit of time to win the case. The cost of applying for a Trade Name Registration is very inexpensive in comparison.

Also, please be aware, your Nevada Trade name registration would be superseded by a Federal Trade Name Registration. So if you plan to conduct business throughout the U.S. using the name of your Corporation, or if you just want to make sure no one else in the U.S. can use that name, you should file a Federal Trade Name Registration with the U.S. Patent and Trade Mark Office. But be aware, that is a considerably more complex process than applying for a Trade Name Registration with the NV SOS. So you may want to start with the NV application and then later file for a Federal Trade Name Registration. If you decide to apply for a Federal Trade Name Registration, please contact our office (702) 388-4401 and we can refer you to an attorney to assist you with that, and the attorney will discount his/her services pursuant to your

LegalShield Membership.

We do not recommend using retirement funds, such as IRA, 401(K), etc. to fund the start of your Corporation. It is allowed, but the IRS rules and regulations governing the use of those funds are extremely complex. If you do not follow them to the letter, the penalties the IRS can impose upon you are daunting. As a fine, they can charge you 3 times the amount you have withdrawn from one of those accounts to start your business. So as an example, if you withdrew \$50,000.00, and you failed to comply with the IRS rules precisely, your fine would be \$150,000.00. Not at all worth it, so we do not recommend using those funds to start your business.

Finally, just remember, you have formed a corporate entity and therefore you owe a fiduciary duty to your Corporation. Your fiduciary obligation to your Corporation is even greater than any self interest which you may have. So as an example, if you become aware of a financial opportunity from which you could profit personally, but your Corporation would also be able to profit from that opportunity, your fiduciary duty obligates you to defer that opportunity to your Corporation. Also, if your Corporation has multiple Shareholders, all of the Shareholders of the Corporation would owe a fiduciary duty to one another. This means you all would have to deal openly and fairly with each other and no one is allowed to deal with the others in secret or behind anyone's back. If you would like additional information regarding the Corporate Fiduciary Duty, there are numerous articles on that topic which you can find on the internet.

We wish you all the best in your new business endeavor.

Sincerely,

Joseph F. Dempsey, Esq.