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INFORMATION REGARDING

OPERATION OF A NEVADA CORPORATION

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 (EIN) 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 EIN 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.