<<date>>

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**Re: documents to create nonprofit corporation**

Dear \_\_\_\_\_\_\_\_\_\_\_\_

Enclosed are the documents that I have prepared for the creation of the nonprofit corporation that you have requested.

* **"Articles of Incorporation"**: You must file the Articles of Incorporation with the Florida Department of State in order to create the new corporation. No other documents need to be filed. There is a $70.00 filing fee ($35.00 for filing and $35.00 to enroll the registered agent). Mail the Articles of Incorporation along with a check made out to "Florida Department of State", to:

Florida Department of State

Division of Corporations

P.O. Box 6327

Tallahassee, Florida 32314

**Post Incorporation Documents:** After the Secretary of State sends you the Certificate of Incorporation you need to complete the organization of the corporation. For this purpose I have enclosed the following documents (DO NOT MAIL THEM TO TALLAHASSEE):

* **"CONSENT OF INCORPORATOR":** The Articles of Incorporation do not specify who the identity of the initial board of directors or the officers. Florida law allows the incorporators to name these persons as well as to complete the organization of the corporation. For this reason I have enclosed a document labeled "Consent of Incorporators". Don't forget to type or print the information required in Exhibit "A" Fill in any other blanks on the document. Place the whole document (with attachments) in the minute book.
* **Minutes of the First Meeting of the Board of Directors:** These need to be put into the minute book. Don't Forget to attach the bylaws (see below) and the share certificate "specimen" form.
* **"Bylaws":** The Bylaws are the internal rules of governance for the corporation. The bylaws are not filed in Tallahassee. The enclosed document is a draft. Please make any revisions that you feel are needed (most people find that these bylaws are ready to use with little or no revisions). If you do want to make changes, contact me and let me know what they are and I will print out a new draft . The bylaws need to be adopted by the at the first meeting of the board of directors For this reason, they need to be attached to the minutes of that meeting (see above).
* **"Common share certificate":** This document is given to each stockholder after the stock has been paid for. In order to re-transfer the stock in the future the proper endorsements need put onto the stock certificate and the new owner must come to the corporate secretary and have the change in ownership recorded in the "stock transfer book".
* **"Stock transfer book":** There needs to be a separately labeled section of the minute book labeled "stock transfer book". When the stock certificate is issued an entry is placed into the "stock transfer book" indicating the name and address of the initial owner. When the original owner transfers (by endorsement) some or all of the shares represented on a stock certificate, the Secretary will issue a new certificate to the new owner. In the event that the original stock holder is not transferring all of his or her shares, a new certificate will also be issued to the original owner reflecting the balance of the remaining shares that are still owned.

**MINUTE BOOK:** It is strongly recommended that a minute book be maintained using some of the documents enclosed with this letter as the initial entries. Use a file folder (or binder). Label it "Minute Book" in large letters.. The first three items to go into the minute book are the enclosed "Consent of Incorporator", "Minutes of the First Meeting of the Directors" and the "Stock Transfer Book". In the future add only items that are directly related to authorizations being given by the directors. Use separate folders for all items that are not directly related to that.

**ANNUAL REPORT:** Every year following the year of incorporation each Florida Corporation MUST file an annual report and pay an annual fee to the State. It can be done online with a credit card at the Sunbiz website (www.Sunbiz.org). Failure to do this will result in the corporation being administratively dissolved by the State.

**GENERAL ADVICE:** Your best defense against personal liability is a credible minute book. One of the main reasons that corporations are formed is to acquire "limited liability" (i.e. protecting shareholder's and board members from personal liability for the acts of the corporation). Creditors of corporations will often try to get the courts to allow them to "pierce the corporate veil" and bring personal law suits against shareholders and directors for the acts of the corporation. The courts will allow this if the corporation is a "sham". A sham corporation is one that does not follow the corporate formalities. The most important formality is having the corporation act only through authorized agents. The only way that corporate agents can become authorized, of course, is through resolutions passed by the board of directors (or with written consent of the shareholders). All such authorizations should be documented in the minute book. In other words, if you don't keep an accurate minute book it is probably a waste of your time forming this corporation because if you are sued you will probably not be able to take advantage of the doctrine of limited liability.

**Federal Employer Identification Number:** After incorporating the new corporation should apply for a federal "Employer Identification Number" (EIN) from the IRS. The EIN is an official identification number similar to a social security number. You'll need it to open a bank account. You can apply for the EIN on-line (it's free). Go to the IRS website (irs.gov) and type "EIN" in the search bar then click the link for the application page. Upon completion of the on-line application a PDF letter from the IRS is instantly generated by your computer stating what the EIN is.

**Annual Report Must be Filed with the State.** The new corporation must file an "Annual Report" with State on yearly basis to maintain “active” status. The filing is done on-line through the state's Sunbiz.org website. Each year the Annual Report must be filed between January 1st and May 1st. The first Annual Report is due the year FOLLOWING the year that the nonprofit was first incorporated. Mark this on you calendar because the State may not send you a reminder). There is a fee of $61.25. If you fail to file by mid September the corporation will be "administratively dissolved".

**Bank Account**: It is very important that the new corporation have its own bank account. All debts owed by the corporation should be paid out of that account and not out of the personal accounts of the officers or directors. If a director or officer loans money to the nonprofit always make sure that the loan is properly documented with simple promissory note.

**Avoid Appearance of "Improper Personal Benefit":** Payments should never be made to an officer or director unless it is reasonable compensation for services or goods that are actually provided (all such payments should be properly documented with invoices, contracts, promissory notes, etc. as might be relevant). Generally, the nonprofit should never loan money to officers and directors.

Contact me if you have questions.

Sincerely

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