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MEMORANDUM FROM THE DESK OF C. D. MICHEL

**Re: HOW TO AVOID PERSONAL LIABILITY
WHEN SIGNING A BUSINESS CONTRACT**

Date: July 12, 2011

To determine whether an authorized business representative who signs a contract is personally liable, courts consider the written instrument, in its entirety. To avoid personal liability, those signing legal instruments on behalf of their company should unambiguously demonstrate that their signature is made in a representative capacity only. This should be done by clearly manifesting in the body of the instrument, and in each signature field, that the commitment tendered is that of the company only, not the individual signer.

THE INSTRUMENT SHOULD IDENTIFY THE COMPANY AS THE PRINCIPAL UNDER THE CONTRACT

Under the 1990 Revision to Article 3 of the Uniform Commercial Code (U.C.C.), if an authorized representative signs his or her name on behalf of a represented party but the instrument fails to “identify” the represented entity, the representative is liable for the instrument. U.C.C. § 3-402. Prior to 1990, U.C.C. section 3-403 dictated that the individual who signed the instrument retained sole liability for the contract unless the principal that he or she signed on behalf of was “named” in the document. U.C.C. § 3-403 (Pre-1990 version); *see Lanier v. Bank of Virginia-Potomac*, 39 Md.App. 589, 595 (1978) (citing *Belmont Dairy Co. v. Thrasher*, 124 Md. 320 (1914) and holding that “where an officer of a corporation endorses his name to a promissory note with the addition of his official title but without the name of the corporation or a designation of whom he is acting in a representative capacity for, he is prima facie personally liable”).

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While it is no longer necessary that the instrument state the legal name of the represented party, to clearly absolve the signing representative of potential personal liability, the instrument should clearly identify the company as the principal, both in the body of the instrument, and in each signature block. U.C.C. § 3-402 Official Cmt.

I. The Body of the Instrument

Courts examine contracts by looking at the instrument in its entirety, including both the body of the instrument and each signature block in order to determine the signer's capacity. *F.D.I.C. v. Woodside Const., Inc.*, 979 F.2d 172 (9th Cir. 1992). To clarify that the signer acted in a representative capacity on behalf of the company, parties should expressly identify the corporation and its obligations under the contract within the body of the instrument. 12 WILLISTON ON CONTRACTS § 35:56 (4th ed.).

II. Signature Blocks

Each of the instrument's signature fields or blocks should state the company's name, and the signer's title, and language specifying that the signature is made in a representative capacity only should also be included. Merely adding the signor's title next to their signature may not be enough to absolve personal liability.

Finally, to minimize personal liability risk on a document with multiple signature fields or blocks, each of the representative's signature blocks should unambiguously demonstrate that the signature is made in a representative capacity only. *See Woodside*, 979 F.2d at 176 (holding a corporate officer personally liable when he signed an instrument twice, once on a line that designated his representative capacity, and once above the name of the corporation with no representative capacity designated).

Historically, absent words in the body of the instrument showing a different intent by the parties, the mere addition of the word "agent" or an official designation or title such as "president," or "secretary" has been insufficient to absolve the signing party of individual liability. *See e.g., Sebastian Intern., Inc. v. Peck*, 195 Cal. App. 3d 803, 809 (1987); *Ricker v. B-W Acceptance Corp.* 349 F.2d 892, 894 (10th Cir. 1965); *Bissonnette v. Keyes*, 319 Mass. 134 (1946). While there is some authority that an agent signing "of" or "for" the company for which they work is relieved of personal liability, these cases are not consistent.

To avoid liability, the instrument itself should clearly indicate that the signer executes the instrument in an official, not a personal, capacity. Structuring the representative's signature block so that it states that the individual is signing "on behalf of," "on account of," "as a representative of," "by," or "per" the company is advised.

A. Signature of Corporation with a Stamp

To avoid ambiguity, individuals who regularly execute legal instruments in a representative capacity should consider using a corporate stamp for signatures. Like all other signature blocks, stamped signature blocks should unambiguously demonstrate that the individual is executing the instrument in a representative capacity by identifying the represented party, stating the signer's title, and including language specifying the signature is made in a representative capacity.

The corporate stamp might look similar to the sample below, leaving a blank space for the signature.

For: Michel & Associates, P.C.

By: _____

Name: C.D. Michel, Senior Counsel

On behalf and as a representative of
Michel and Associates, P.C. only