

RESOLUTION NO. 03-22

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, APPROVING THE AGREEMENT BETWEEN THE CITY AND THE LAW FIRM OF KLUGER PERETZ KAPLAN & BERLIN, P.A. FOR INTELLECTUAL PROPERTY MATTERS RELATING TO THE NAME "DORAL"; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, on August 21, 2003, the City Council of the City of Doral (the "City") appointed the law firm of Kluger Peretz Kaplan & Berlin, P.A. as counsel for the City on intellectual property matters, particularly relating to the name "Doral"; and

WHEREAS, the City Council desires to approve an agreement between the City and Kluger Peretz Kaplan & Berlin, P.A. for intellectual property legal services.

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals.** The above recitals are true and correct and are incorporated herein by this reference.

**Section 2. Approval of Agreement.** The Draft Agreement between the City and Kluger Peretz Kaplan & Berlin, P.A. for intellectual property legal services, attached as Exhibit "A" together with such non-material changes as may be acceptable to the Mayor and City Manager and approved as to form and legality by the City Attorney, is approved.

**Section 3. Execution of Contract.** The Mayor is authorized to execute the contract on behalf of the City.

**Section 4. Effective Date.** This resolution shall take effect immediately upon its adoption.

The foregoing Resolution was offered by Councilmember Ruiz,  
who moved its adoption. The motion was seconded by Cabrera and upon  
being put to a vote, the vote was as follows:

Mayor Juan Carlos Bermudez  
Vice Mayor Peter Cabrera  
Councilmember Michael DiPietro  
Councilmember Sandra Ruiz  
Councilmember Robert Van Name

Yes  
Yes  
Yes  
Yes  
Yes

PASSED and ADOPTED this 3<sup>rd</sup> day of September, 2003.

JCB  
JUAN CARLOS BERMUDEZ, MAYOR

ATTEST:

Beatriz M. Guitierrez  
CITY CLERK

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY FOR THE  
SOLE USE OF THE CITY OF DORAL:

[Signature]  
CITY ATTORNEY

**KLUGER, PERETZ, KAPLAN & BERLIN P.L.**



September 2, 2003

City of Doral  
c/o The Honorable Juan Carlos Bermudez  
Doral Center  
8300 N.W. 53<sup>rd</sup> Street  
Suite 300  
Miami, Florida 33166

Re: Retention of Kluger, Peretz, Kaplan & Berlin, P.L.  
Representation of City of Doral

Dear Juan:

It was a pleasure meeting with you. I will be the attorney in charge of the matter. Our department rates are attached. We will require a refundable retainer in the amount of \$10,000.00, which we will defer for two weeks.

Attached you will find a retainer agreement that we need signed for our files. Please review the retainer addendum and have the client sign it acknowledging his acceptance and approval and send back to us along with the retainer check.

Please do not hesitate to contact me if you have any questions regarding any of the foregoing.

Very truly yours,

KLUGER, PERETZ, KAPLAN & BERLIN, P.L.

By: \_\_\_\_\_  
Jorge Espinosa

Enc.

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**KLUGER, PERETZ, KAPLAN & BERLIN, P.L.**  
**STANDARD HOURLY FEE ADDENDUM**

This Addendum sets forth the standards upon which the Firm will provide legal services to a client and bill for those services. This Addendum accompanies a fee letter ("Accompanying Letter") addressed to a client or clients (jointly, severally and collectively the "Client") and shall become part of the agreement between Kluger, Peretz, Kaplan & Berlin, P.L. (the Firm) and the Client. It is intended that this Addendum shall be incorporated by reference into the Accompanying Letter. To the extent any terms in the Accompanying Letter conflict with this addendum, the provisions in the Accompanying Letter shall supersede the provisions in this Addendum.

1. **PROFESSIONAL UNDERTAKING:** The Attorney in Charge will have primary responsibility for the Client's representation, and may, in his or her sole discretion, utilize other attorneys and legal assistants in the Firm who can accomplish the work. If at any time the Client has any questions, concerns or criticisms concerning the utilization of other attorneys or legal assistants, or any other matters, the Client should contact the Attorney in Charge.

2. **FEES:** The Firm takes into account many factors in billing for services rendered, and the Attorney in Charge will review all invoices before they are issued to ensure that the amount charged is appropriate. The principle factor is usually the Firm's schedule of hourly rates, and most invoices for services are the product of the hours worked multiplied by the Firm's hourly rates then in effect at the time the work is performed.

It is impossible to determine in advance how much time will be needed, since that depends on many things beyond our control. Any figures we give you for the cost of all or part of our engagement are merely estimates.

Our schedule of hourly rates for attorneys and other members of the professional staff is based on years of experience, specialization in training and practice, level of professional attainment, and overhead costs. Currently our hourly rates range from \$100.00 for legal assistants to \$435 for our most senior partners. We reconsider our schedule of hourly rates annually, and may revise them at that time. If we change our rates, the new rates will go into effect immediately without special notice to the Client. Upon request, we will provide a Client with the rates of those professional staff working on an engagement.

3. **COSTS:** It is usually necessary for us to incur, as agent for our clients, expenses for items such as filing fees, travel, lodging, meals, toll telephone calls, photocopying, facsimiles ("faxes"), postage and courier services. Many engagements require substantial amounts of costly ancillary services such as outside duplication services and computerized legal research. The Client is responsible for all costs incurred on the client's behalf. In order to allocate these expenses fairly and to keep our hourly rates as low as possible for those matters which do not involve such

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expenditures, these items are separately itemized on our statements as "costs advanced" or "disbursements."

Outside fees and expenses (such as printers, experts, investigators, consultants, court reporters), will be paid from your retainer. No expenses in excess of \$1,000 will be incurred without your authorization.

4. **BILLING:** The Firm's invoices generally will be prepared and mailed during the month following the month in which services are rendered and costs advanced. When the Firm represents a Client in litigation and a money judgment is obtained, the Firm may, at its option, take the Firm's outstanding fees and disbursements from funds collected out of the money judgment. If the Firm represents the Client on more than one matter, the Firm reserves the right to apply balances from one matter against other matters.

5. **RETAINER:** It is the Firm's policy to require advance payments before the Firm renders services. As the retainer is used by the Firm for payment of ongoing fees, the Client will replace it from time to time upon request.

6. **SECURITY FOR FEES AND COSTS:** Florida law provides the Firm with the right to impose a lien upon documents, money and other intangibles and materials coming into possession to secure the payment of its fees and expenses. This retaining lien, as well as appropriate charging liens, may be asserted by the Firm in appropriate circumstances.

7. **EMPLOYMENT OF EXPERTS OR ADDITIONAL PROFESSIONALS:** In the event the Firm deems it necessary to employ additional experts or professionals with specialized skills (e.g., accounting, surveying, appraisals, environmental audits, etc.), then, after consultation with (and consent of) the Client, additional professionals may be employed by the Firm. The Firm will employ professionals in the name of the Client or, at the discretion of the Firm, in the Firm's name on behalf of the Client. The Client is, in either event, responsible to pay the fees of such professionals in full upon the rendering of the professionals' statement therefor. The Firm reserves the right to request and obtain an additional retainer to defray the fees and costs of professionals employed in connection with a Client matter. All fees and costs of additional professionals shall be subject to the security provisions, interest provisions and other applicable provisions of this Standard Fee Addendum.

8. **PAYMENT BY OTHERS:** Sometimes another party to a transaction agrees to pay our client's legal fees, or a court may order our client's adversary to pay all or part of its legal fees and costs. However, in such case our Client remains primarily liable for payment of all fees and costs. Any amounts received from others will be credited to the client's account. The Firm has the right to receive the higher of an amount awarded by the court or its hourly fees.

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9. **LATE PAYMENTS:** Payment of the Firm's billings is due upon receipt of the invoice. Because the Firm has ongoing overhead expenses and because of the costs of money to the Firm, a monthly late charge or interest may be added for late payments of fees and/or costs. On the first day of each month the balance of any invoice then unpaid for more than one (1) month may be subject to a charge of one and one-half (1 ½%) percent per month. In no event will the rate be greater than permitted by applicable law. Payments may be accepted late without assessing a late charge at the discretion of the Firm. At first payments will be charged against the client's retainer.

10. **NON-PAYMENT OF FEES AND COSTS:** In the event of failure to pay any statement rendered when due, you agree that we may cease all legal services on your behalf or discontinue representation (subject to our ethical obligations and any other applicable provision of law).

11. **ATTORNEYS' FEES:** In the unlikely event that it is necessary to institute legal proceedings to collect the Firm's fees and costs, the Firm will also be entitled to a reasonable attorney's fee, paralegal fees and charges and other costs of collection, even if such services and costs are provided by the Firm.

12. **TERMINATION:** The Client will have the right to terminate the Firm's representation at any time, but the provisions of the Accompanying Letter and this Standard Fee Addendum related to payment and collection of fees and disbursements will not terminate. The Firm will have the same right to terminate the Firm's representation, subject to its obligation to give the Client reasonable notice to arrange other representation.

13. **WAIVER:** A party's failure to insist on compliance or enforcement of any provision of this Agreement shall not affect the validity or enforceability or constitute a waiver of future enforcement of that provision or of any other provision of this Agreement by that party or any other party.

14. **AMENDMENTS:** This Agreement may be amended at any time by mutual consent of the parties hereto, with any such amendment to be unenforceable unless in writing, signed by the Firm and the Client.

15. **APPLICABLE LAW:** This Agreement shall be governed for all purposes by the laws of the State of Florida. If any provision of this Agreement is declared void, such provision shall be deemed severed from this Agreement, which shall otherwise remain in full force and effect.

16. **JURISDICTION and VENUE:** Any dispute resolution proceeding arising from or relating to this Agreement shall be instituted only in Dade County, Florida, the place where this Agreement was executed. Each of the parties hereto hereby submit to the jurisdiction of the Courts of the State of Florida to enforce the dispute resolution procedures enumerated below and to confirm any award from the American Arbitration Association.

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17. **DISPUTE RESOLUTION:** The following procedures will be used to resolve any dispute arising from or related to the retainer agreement and standard fee agreement. If any of these provisions are determined to be invalid or unenforceable, the remaining provisions shall remain in effect and binding on the parties to the fullest extent permitted by law.

(a) Mediation

A dispute shall be submitted to mediation by written notice to the other party or parties. In the mediation process, the parties will try to resolve their differences voluntarily with the aid of any impartial mediator, who will attempt to facilitate negotiations. The mediator will be selected by agreement of the parties. If the parties cannot agree on a mediator, a mediator shall be designated by the American Arbitration Association ("AAA") at the request of a party. Any mediator so designated must be acceptable to all parties.

The mediation will be conducted as specified by the mediator and agreed upon by the parties. The parties agree to discuss their differences in good faith and to attempt, with the assistance of the mediator, to reach an amicable resolution of the dispute.

The mediation will be treated as a settlement discussion. The mediation will be treated as confidential. The mediator may not testify for either party in any later proceeding relating to the dispute. No recording or transcript shall be made of the mediation proceedings.

Each party will bear its own costs in the mediation. The fees and expenses of the mediator will be shared equally by the parties.

(b) Arbitration

If any dispute arising from or related to the retainer agreement and standard fee addendum has not been resolved within 90 days after the written notice beginning the mediation process (or a longer period, if the parties agree to extend the mediation), the mediation shall terminate and the dispute shall be resolved exclusively by mandatory binding arbitration. The arbitration will be conducted exclusively in Miami, before the AAA.

The arbitration will be conducted by a sole arbitrator, regardless of the size of the dispute. The arbitrator will be selected as provided in the AAA rules. Any issue concerning the extent to which any dispute is subject to arbitration, or concerning the applicability, interpretation, or enforceability of these procedures, including any contention that all or part of these procedures are invalid or unenforceable, shall be resolved by the arbitrators applying Florida law, regardless of Florida law's governing conflict of laws. No potential arbitrator may serve as arbitrator unless he or she agrees in writing to abide and be bound by these procedures. The fees and expenses of the arbitrator and of the AAA will be shared equally by the parties throughout the arbitration proceeding. However,

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at the conclusion of the arbitration proceeding, the arbitrator shall award the prevailing party reimbursement of the fees and expenses of the arbitrator and AAA paid by the prevailing party throughout the arbitration proceeding.

The arbitrator may not award non-monetary or equitable relief of any sort. The arbitrator has no power to award punitive damages or any other damages not measured by the prevailing party's actual damages, and the parties expressly waive their right to obtain such damages in arbitration or in any other forum. In no event, even if any other portion of these provisions is held to be invalid or unenforceable, shall the arbitrator have the power to make an award or impose a remedy that could not be made or imposed by a court deciding the matter in the same jurisdiction.

All aspects of the arbitration shall be confidential. Neither the parties nor the arbitrator may disclose the existence, content or results of the arbitration, except as necessary to comply with legal or regulatory requirements or to enforce the agreement between the parties or any order or award of the arbitrator.

The result of the arbitration will be binding on the parties, and judgment on the arbitrator's award may be entered in any court having jurisdiction.

REVIEWED, ACKNOWLEDGED AND ACCEPTED this 3<sup>rd</sup> day of Sept. ~~August~~, 2003.

CITY OF DORAL

By: *Jal*

Its: *Moran*