

Meeting Date: September 22, 2009

Agenda Item 3
Memorandum No. 09 - 334

REQUESTED COMMISSION ACTION:

Consent Ordinance Resolution Consideration Workshop

SHORT TITLE OR MOTION: AN RESOLUTION , OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A DAYTIME/NIGHTTIME SHARED PARKING AGREEMENT BETWEEN RUND, INC. AND THE CITY OF POMPANO BEACH ; PROVIDING AN EFFECTIVE DATE.

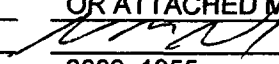
Summary of Purpose and Why:

Code Section 155.112(A)(4) allows for the use of 75% of the provided parking spaces on a property to be shared with a nearby property or tenants within a plaza. This agreement is intended to be a daytime/nighttime shared parking arrangement allowing for the nighttime use of a second floor café and smoking establishments while other certain establishment will be closed. The project is located at 2751-2761 W. Atlantic Blvd.

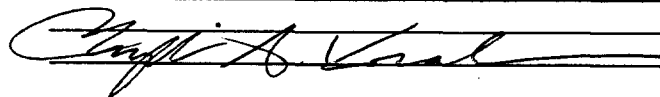
The attached agreement specifically allocates which spaces are assigned to all of the users of the site owned by RUND, Inc. and the adjacent site. Each parking space has been "assigned" to show compliance to the parking code requirements.

QUESTIONS TO BE ANSWERED BY ORIGINATING DEPARTMENT:

- (1) Origin of request for this action: Mohammad Salameh, President of RUND, Inc
- (2) Primary staff contact: Vicky L. Newson / Robin M. Bird Ext. 7783
- (3) Expiration of contract, if applicable: N/A
- (4) Fiscal impact and source of funding: N/A

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE OR ATTACHED MEMO NUMBER
Zoning Dept.	09/11/2009	Approval	
City Attorney	09/03/2009	---	2009-1955

- Advisory Board
- Public Works Administrator
- Interim City Manager



ACTION TAKEN BY COMMISSION:

<u>Ordinance</u>	<u>Resolution</u>	<u>Consideration</u>	<u>Workshop</u>
1 st Reading	1st Reading	Results:	Results:
2 nd Reading			

RESOLUTION NO. 2009-_____

CITY OF POMPANO BEACH
Broward County, Florida

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A DAYTIME/NIGHTTIME SHARED PARKING AGREEMENT BETWEEN R U N D, INC. AND THE CITY OF POMPANO BEACH; PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That an Agreement between R U N D, Inc. and the City of Pompano Beach, a copy of which Agreement is attached hereto and incorporated by reference as if set forth in full, is hereby approved.

SECTION 2. That the proper City officials are hereby authorized to execute said Agreement between R U N D, Inc. and the City of Pompano Beach.

SECTION 3. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this _____ day of _____, 2009.

LAMAR FISHER, MAYOR

ATTEST:

MARY L. CHAMBERS, CITY CLERK

GBL/jrm
9/3/09
l:reso/2009-318

DAYTIME / NIGHTTIME
SHARED PARKING AGREEMENT

THIS IS AN AGREEMENT by and between **RUND, INC.** hereinafter referred to as **OWNER**, and the **CITY OF POMPANO BEACH**, a municipal corporation of the State of Florida, hereinafter called "**CITY**".

WHEREAS, Chapter 155, Section 155.112(A)(4) permits the use of up to 75% of the parking spaces of a use in operation during the daytime only may be used to satisfy the parking requirement of this chapter for use in operation during the nighttime only; or up to 75% of the parking spaces of a use in operation Monday through Friday may be used to satisfy the parking requirements for a use in operation on Saturday or Sunday only; or up to 75% of the parking spaces of a use in operation Monday through Saturday only may be used to satisfy the parking requirement of this chapter for a use in operation on Sundays only.

WHEREAS, Chapter 155, Section 155.112(A) (4) (a), City of Pompano Beach Code of Ordinances, provides that shared parking spaces shall be located upon the same parcel of land the spaces are intended to serve, or on an additional parcel of land within five hundred (500) feet airline measurement of the nearest property line of the premises the shared parking spaces are intended to serve; and

WHEREAS, the **OWNER** of certain real property situate, lying and being Broward County, Florida, and described more fully in **Exhibit "A"** attached hereto and incorporated herein, and hereinafter referred to as **Parcel "A"**,

intends to make improvements on **Parcel "A"** which contains a night time café that requires 27 parking spaces .

WHEREAS, the City of Pompano Beach has approved a site plan for such improvements that contains a total of fifty-eight (58) parking spaces to satisfy parking requirements for the existing gas station/car wash hereafter referred to as building (A) , a retail/office building that contains 2,160 square feet of retail, 1350 square feet of office space, and a two-bay oil change facility hereafter referred to as building (B) and a new project that consists of one building with 6000 square feet of retail use and a night time café on the second floor hereafter referred to as building (C) and a separate building for a 1370 square foot restaurant hereafter referred to as building (D).

WHEREAS, seventeen (17) parking spaces shall be dedicated to the use of the existing gas building (A), that is open for business up to 24 hours, seven days a week, and four (4) parking spaces shall be dedicated to the use of the new building (D) containing a restaurant, that will be opened for business into nighttime hours.

WHEREAS, the remaining thirty-seven (37) parking spaces are required for the existing and future daytime tenants.

WHEREAS, the **OWNER** and owner of building (A) have signed a unity of use agreement, Exhibit "B", as recorded in the Public Records of Broward County.

WHEREAS, the parking requirements for the nighttime café located on the second floor of building (C) is twenty-seven (27) parking spaces, which can be

satisfied by using 75% of the thirty-seven (37) parking spaces as allowed by code section 155.112(A)(4).

WHEREAS, daytime operating hours shall not exceed 7:00 P.M. seven days per week, and nighttime operating hours shall start no sooner than 7:00 P.M.

IN CONSIDERATION of the mutual promises, terms, and conditions contained herein, **OWNER** and "**CITY**" agree as follows:

- (1) **OWNER** agrees to maintain seventeen (17) parking spaces of the available fifty-eight (58) spaces for the use of building "A" employees and customers and four (4) parking spaces for the use of building "D" employees and customers on a twenty-four hour/seven day week basis. The remaining thirty-seven (37) parking spaces will be allocated for existing and future lessees of any retail or office uses for employees and customers in buildings "B" and "C", limited to daytime hours of operation from 7 AM to 7 PM, and nighttime operations, for the second floor of building "C", are allocated twenty-seven (27) spaces for uses that shall start no sooner than 7 PM and end no later than 7 AM. See Exhibit "C" for specific spaces allocation.
- (2) The provisions contained herein shall be covenants running with the land and shall be binding upon the heirs, successors and assigns of the parties.
- (3) An additional parcel or parcels of land meeting the provisions of the City of Pompano Beach Code of Ordinances may be substituted for this agreement, with the permission of the **CITY**, by means of an agreement of

equal dignity to this Agreement and recorded in the Public Records of Broward County, Florida.

- (4) This Agreement shall be of no effect until it is properly executed by the CITY and OWNER and recorded in the Public Records of Broward County, Florida.

IN WITNESS WHEREOF, CITY and OWNER have executed this Agreement on the respective dates under each signature.

“OWNER”

Witnesses:

Gilda M. Cebuan
[Signature]

RUND INC.

[Signature]

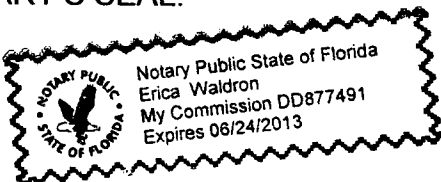
Mohammad Salameh
Print name

Title: President

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 11 day of Sept, 2009 by Mohammad Sulaiman as President RUND, INC, a Florida corporation, on behalf of the corporation and who is personally known to me or who has produced FDL 545055758240 as identification.

NOTARY'S SEAL:



Erica Waldron
NOTARY PUBLIC, State of Florida

Erica Waldron
NAME OF (ACKNOWLEDGER, TYPED, PRINTED OR STAMPED)

"CITY"

Witnesses:

CITY OF POMPANO BEACH

By: _____

LAMAR FISHER, MAYOR

By: _____

PHYLLIS A. KORAB, INTERIM CITY
MANAGER

Attest:

MARY L. CHAMBERS
CITY CLERK

Approved as to Form:

GORDON LINN
CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this ____ day of _____, 2009 by LAMAR FISHER, as Mayor of the City of Pompano Beach, a municipal corporation, on behalf of the municipal corporation and who is personally known to me..

NOTARY'S SEAL:

NOTARY PUBLIC, State of Florida

NAME OF (ACKNOWLEDGER, TYPED, PRINTED OR
STAMPED)

EXHIBIT "A"

**MARION HOSEIN PLAT (118-4B) TRACT B TOGETHER WITH
TRACT A OF RAMI SALAMEH PLAT (177-197B).**

UNITY OF USE AGREEMENT

THIS UNITY OF USE AGREEMENT ("Agreement"), dated as of the 19th day of March, 2009, is made by and between **INTRACOASTAL DEVELOPMENT GROUP**, a Florida corporation ("Owner A") and **RUND INC.**, a Florida corporation ("Owner B"). "Owner A" and "Owner B" shall herein be collectively referred to as the "Parties", or individually as a "party".

RECITALS:

WHEREAS, Owner A is the owner of that certain real property located in the City of Pompano Beach in Broward County, Florida (the "City") legally described on Exhibit "A", attached hereto and made a part hereof (the "Owner A Parcel"); and

WHEREAS, Owner B is the owner of that certain real property located in the City adjacent to the Owner A Parcel legally described on Exhibit "B", attached hereto and made a part hereof (the "Owner B Parcel").

WHEREAS, the City Planning and Zoning Board approved the unified commercial plan for Owner A Parcel and Owner B Parcel (collectively, the "Property") pursuant to Development Order 08-12000022 adapted January 28, 2009 ("Development Order"), which such approved site plan is attached hereto and made a part hereof as Exhibit "C" ("Site Plan").

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto intending to be legally bound, do hereby agree as follows:

1. The above recitals are true and correct and are incorporated herein by this reference.
2. Owner A and Owner B hereby agree that following the issuance of a building permit for any building constructed on the property in accordance with the Development Order and the Site Plan, the Property shall be developed as a unified Project. Accordingly, in the event the Parties desire to amend the Site Plan and such amendment requires Major Review by the City pursuant to Section 157.05(A) of the City Code of Ordinances, the Parties shall submit one application to the City to obtain the City's review and approval of a proposed amendment to the Site Plan ("Unified Development Plan").
3. The requirement for a Unified Development Plan shall not prohibit the Parties from independently submitting applications to the City for a change to the Site

Plan for either the Owner A Parcel or the Owner B Parcel, provided such change or changes are subject to Minor Review by the City pursuant to section 157.05(B) of the City Code of Ordinances or the proposed change(s) are deemed exempt from development review pursuant to Section 157.05(C) of the City Code of Ordinances.

- 4. This Agreement shall constitute a covenant running with the land, as provided by law, and shall be binding upon the undersigned, its successors and assigns, and all parties claiming hereunder.
- 5. The Parties do further agree that this instrument shall be recorded amongst the Public Records of Broward County, Florida.
- 6. Except as expressly provided herein, this Agreement may not be terminated or amended without the express written consent of the Zoning Director of the City.

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all constituting only one Agreement.

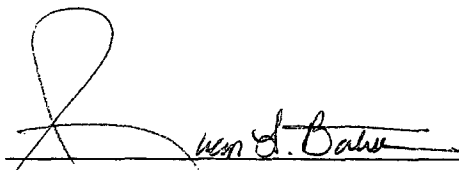
IN WITNESS WHEREOF, the Parties have caused this agreement to be executed as of the day, month and year first written above.

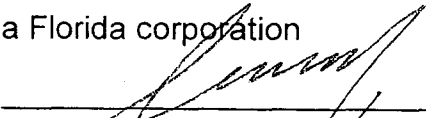
WITNESSES:

OWNER A

INTRACOASTAL DEVELOPMENT GROUP,

a Florida corporation


 Printed name Juan Luis Batista


 By: MALCOLM TARRY

Its: PRESIDENT

(Corporate Seal)



Florida Corporation

STATE OF FLORIDA

COUNTY OF Broward

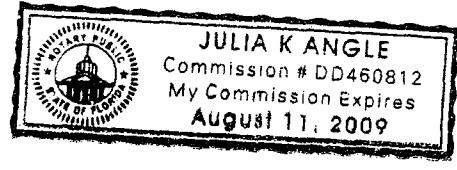
The forgoing instrument was acknowledged before me this 19 day of March, 2009, by Malcolm Tarry, as _____ of _____

Intracoastal Development Inc., a Florida Corporation. He/She is personally known to me _____ or has produced FL DL as identification.

[Signature]
NOTARY PUBLIC

My Commission Expires: 8/11/09

Notary Seal:



(Signatures continued on next page)

WITNESSES:

[Signature]
Printed name Joan Luis Batista

OWNER B

RUND, INC.
a Florida corporation
[Signature]

By: MOHAMMAD SALAMEH

Its: PRESIDENT

(Corporate Seal)

STATE OF FLORIDA

COUNTY OF Broward

The forgoing instrument was acknowledged before me this 19 day of March, 2009, by MOHAMMAD SALAMEH, as President of **RUND, Inc.**, a Florida Corporation. He is personally known to me X or has produced _____ as identification.

[Signature]
NOTARY PUBLIC

My Commission Expires: 8/11/09

Notary Seal:



EXHIBIT "A"

TRACT (A) "ADAM HOSIEN PLAT ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 116, PAGE 45, OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA. SAID PARCEL CONTAINING 25.766 SQUARE FEET, MORE OR LESSTRACT (A) "ADAM HOSIEN PLAT ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 116, PAGE 45, OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA. SAID PARCEL CONTAINING 25.766 SQUARE FEET, MORE OR LESS.

6/7

EXHIBIT "B"

PARCEL 2 TRACT (B) "MARION HOSIEN PLAT" ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 118, PAGE 4, OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA. SAID PARCEL CONTAINING 38,555 SQUARE FEET. MORE OR LESS.

AND

TRACT "A" OF "RAMI SALAMEH PLAT" ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 177 PAGES 197-199 , OF THE PUPLIC RECORDS OF BROWARD COUNTY, FLORIDA. SAID PARCEL CONTANING 29,649 SQUQRE FEET.

