

AN ORDINANCE 2008-05-29-0446

**APPROVING A SIDEWALK PATIO LICENSE AGREEMENT WITH THE PALM RESTAURANT FOR 304 SQUARE FEET OF PUBLIC SIDEWALK SPACE AT 233 E. HOUSTON ST. IN DISTRICT 1, FOR A TERM COMMENCING ON AUGUST 1, 2008 AND ENDING ON DECEMBER 31, 2011, AT AN INITIAL RATE OF \$1.31 PER SQUARE FOOT PER MONTH.**

\* \* \* \* \*

**WHEREAS**, the City has a policy of allowing for patio dining on downtown sidewalks provided that such use does not interfere with pedestrian traffic on the sidewalk, including adequate space for persons in wheelchairs; and

**WHEREAS**, the Palm Restaurant has identified space that satisfies that criteria and would like to use this space for outdoor dining by its customers; and

**WHEREAS**, the Historic and Design Review Commission has approved the patio furniture and fencing; **NOW THEREFORE:**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** The City Manager or her designee, or the Director of the Downtown Operations Department or her designee, is authorized to execute a Sidewalk Patio License Agreement with the Palm Restaurant for 304 square feet of public sidewalk space at 233 E. Houston St. in District 1, for a term commencing on August 1, 2008 and ending on December 31, 2011, at an initial rate of \$1.31 per square foot per month. A copy of the license agreement is attached hereto and incorporated herein for all purposes as Attachment I.

**SECTION 2.** Funds generated by this ordinance will be deposited into Fund 11001000 General Fund, Internal Order 219000000011 Sidewalk, General Ledger 4407711 Lease - Patio Space.

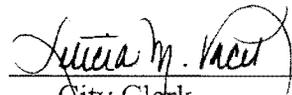
**SECTION 3.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

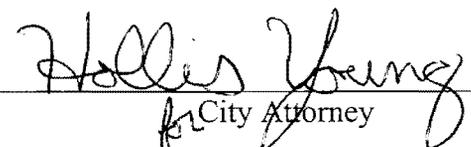
SW/mgc  
05/29/08  
Item #26

**SECTION 4.** This ordinance shall be effective on and after June 8, 2008.

PASSED AND APPROVED this 29<sup>th</sup> day of May, 2008.

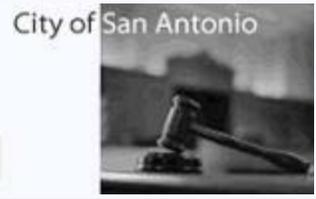
  
**M A Y O R**  
**PHIL HARDBERGER**

ATTEST:   
City Clerk

APPROVED AS TO FORM:   
City Attorney



Request for  
**COUNCIL  
ACTION**



## Agenda Voting Results - 26


<b>Name:</b>	6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 35, 37A, 37B, 38, 40, 41, 42A, 42B, 42C, 42D, 42E, 42F, 42G, 42H
<b>Date:</b>	05/29/2008
<b>Time:</b>	11:07:53 AM
<b>Vote Type:</b>	Motion to Approve
<b>Description:</b>	An Ordinance approving a Sidewalk Patio License Agreement with the Palm Restaurant for 304 square feet of public sidewalk space at 233 E. Houston St. in Council District 1, for a term commencing on August 1, 2008 and ending on December 31, 2011, at an initial rate of \$1.31 per square foot per month. [Pat DiGiovanni, Deputy City Manager; Paula X. Stallcup, Director, Downtown Operations]
<b>Result:</b>	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Phil Hardberger	Mayor		x				
Mary Alice P. Cisneros	District 1		x				x
Sheila D. McNeil	District 2		x				
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4		x				
Lourdes Galvan	District 5		x				
Delicia Herrera	District 6		x			x	
Justin Rodriguez	District 7		x				
Diane G. Cibrian	District 8		x				
Louis E. Rowe	District 9		x				
John G. Clamp	District 10		x				



CMS or Ordinance Number: CN0040002583

TSLGRS File Code:

Document Title:

CONT - License for use of 304 square feet of public sidewalk for patio dining purposes.

**Commencement Date:**

**6/1/2008**

**Expiration Date:**

**12/31/2011**

**THE PALM RESTAURANT**  
**SIDEWALK PATIO LICENSE AGREEMENT**

This License Agreement is made and entered into by and between the **CITY OF SAN ANTONIO**, a Texas Municipal Corporation (hereinafter referred to as "**CITY**"), acting herein through its City Manager, or her designated representative, pursuant to Ordinance No. 200805290446, passed and approved by the City Council on the 29<sup>th</sup> day of May, 2008, and **PALM RESTAURANT SAN ANTONIO, INC.** (hereinafter referred to as "**LICENSEE**"), acting by and through its duly authorized officers, WITNESSETH:

**1. LICENSE OF PREMISES**

1.1. **CITY**, for and in consideration of the rents, covenants, and promises herein contained to be kept, performed and observed by **LICENSEE**, does hereby License to **LICENSEE**, and **LICENSEE** does hereby rent and accept from **CITY** for the term hereinafter set out, the real property owned by the **CITY** at 233 East Houston Street, San Antonio, Texas 78205, as outlined on the drawing which is attached hereto as Exhibit A incorporated by reference herein for the purposes of this License Agreement, the same as if fully copied and set forth at length. Said real property and improvements (hereinafter referred to as the Licensed Premises) are further described as follows:

1.1.1. Area of public sidewalk space adjacent to the business establishment known as **Palm Restaurant**, located at 233 East Houston Street, NCB 407, BLK 17, San Antonio, Bexar County, Texas 78205, identified in Exhibit A and is **304** square feet.

**2. USE OF PREMISES**

2.1. **LICENSEE** agrees that the Licensed Premises shall be utilized for the sole purpose of outdoor dining, including the service of food and alcoholic and non-alcoholic beverages, in accordance with applicable statutes, laws, ordinances, rules and regulations of the United States, the State of Texas, and the City of San Antonio, Texas.

2.2. **CITY'S** Reservation of Rights – In addition to the **CITY'S** Reservations set out in Article 15 and other sections of the License Agreement, **CITY** reserves the right to a public right-of-way along the sidewalk area to follow a path designated by the **CITY** for safe passage by pedestrians and further described by the diagram attached hereto and incorporated herein as Exhibit A. **LICENSEE** shall keep said right-of-way free of obstructions in the form of either fixed or movable objects and shall not allow patrons to queue, or wait for entrance into **LICENSEE'S** business establishment, in said public right-of-way. **LICENSEE** shall comply with the **CITY'S** laws pertaining to queuing along the public sidewalk area and in addition to the right-of-way restrictions described above, shall not use any public space along the public sidewalk area for the queuing or waiting of patrons. Failure to comply with this section may, at **CITY'S** option, constitute default under this License Agreement.

**3. TERM, AND TERMINATION**

3.1. The term of this License is for a three (3) year and five (5) month period beginning on **August 1, 2008** and ending on **December 31, 2011**. The right is expressly reserved to the **CITY**, acting through the City Council, to terminate this Agreement for the following:

- 3.1.1. In the event this License Agreement is deemed to be inconsistent with the public use of the property; or
  - 3.1.2. In the event the use of the Licensed Premises shall have been deemed a nuisance by a court of competent jurisdiction; or
  - 3.1.3. In the event **LICENSEE** shall default in the performance of any covenants or agreements contained herein and shall fail, following thirty (30) days' written notice of such default, to remedy same, save and except a ten (10) days' notice period will apply in the case of Default in the payment of rent.
- 3.2. In the event of termination by City Council in relation to 3.1.1 or 3.1.2 above, the **CITY** shall give **LICENSEE** notice in writing at least thirty (30) days prior to the termination date.
  - 3.3. **LICENSEE** or **CITY** may cancel this Lease by giving ninety (90) days written notice to the other party.

#### 4. RENTAL

- 4.1. The monthly rental shall be **\$1.31** per square foot per month or **\$15.72** per square foot for the first License year, and shall increase by a rate of five percent (5.0%) per square foot per year, commencing upon the anniversary date of each remaining License year. The rental may be paid in one lump sum in advance or in monthly installments in advance on the first day of each month in accordance with the following payment schedule:
  - 4.1.1. August 1, 2008 – December 31, 2008 (**\$1.31** per square foot per month): **\$1,991.20** payable in one lump sum in advance per year or **\$398.24** per month.
  - 4.1.2. January 1, 2009 – December 31, 2009 (**\$1.38** per square foot per month): **\$5,034.24** payable in one lump sum in advance per year or **\$419.52** per month.
  - 4.1.3. January 1, 2010 – December 31, 2010 (**\$1.44** per square foot per month): **\$5,253.12** payable in one lump sum in advance per year or **\$437.76** per month.
  - 4.1.4. January 1, 2011 – December 31, 2011 (**\$1.52** per square foot per month): **\$5,544.96** payable in one lump sum in advance per year or **\$462.08** per month.
- 4.2. Payment shall be submitted to:

**City of San Antonio  
Revenue Division  
P. O. Box 839975  
San Antonio, Texas 78283-3975**

**ALL MONTHLY PAYMENTS OF RENT ARE DUE ON OR BEFORE THE FIRST DAY OF EACH AND EVERY MONTH DURING THE TERM OF THIS LICENSE AGREEMENT.**

- 4.2.1. At any time during the License term if more than two (2) Insufficient Funds Checks are presented to the **CITY** in payment of rental or other considerations during a twenty-four (24) month period, **LICENSEE** will be placed on a cash or money order basis for the following two (2) License years. No exceptions will be made.

- 4.2.2. At any such time, should the **CITY'S** Department of Finance establish and issue uniform policies related to late payment of rent and/or Insufficient Funds Checks, which may be contrary to the terms stated in subsections 4.3.1 – 4.3.2 above, the Department of Finance's policies shall prevail. **CITY** shall make every effort to formally notify **LICENSEE** of any such change(s) in advance.
- 4.2.3. Notwithstanding anything to the contrary set forth in this License Agreement, if **LICENSEE** shall fail to make the timely payment of any rent or any additional charges due the **CITY** from **LICENSEE** or the payment of any other money due the **CITY** from **LICENSEE** under the terms of this License, and any such failure shall be repeated two (2) times in any period of twelve (12) consecutive months, then notwithstanding that any such failure shall have been cured within the allowed cure period, as provided in this License, any further similar failure within said twelve (12) month period shall be deemed to be a **Repeated Event of Default**.
- 4.2.4. In the event of a **Repeated Event of Default**, **CITY**, without giving **LICENSEE** any notice and without affording **LICENSEE** an opportunity to cure the default, may terminate this License forthwith without notice to **LICENSEE**.
- 4.3. Payment shall be made in a manner consistent with Treasury division rules and regulations and shall be subject to various charges and requirements for failure to comply with those rules including, but not limited to, charges and requirements imposed for the submittal of insufficient fund checks.

## 5. ACCEPTANCE AND CONDITION OF PREMISES

- 5.1. **LICENSEE** has had full opportunity to examine the Licensed Premises and acknowledges that there is in and about them nothing dangerous to life, limb or health and hereby waives any claim for damages that may arise from defects of that character after occupancy. **LICENSEE'S** taking possession of the Licensed Premises shall be conclusive evidence of **LICENSEE'S** acceptance thereof in good order and satisfactory condition, and **LICENSEE** hereby accepts the Licensed Premises in its present AS IS, WHERE IS, WITH ALL FAULTS CONDITION as suitable for the purpose for which Licensed. **LICENSEE** accepts the Licensed Premises with the full knowledge, understanding and agreement that **CITY** disclaims any warranty of suitability for **LICENSEE'S** intended commercial purposes.
- 5.2. **LICENSEE** agrees that no representations, respecting the condition of the Licensed Premises, and no promises to decorate, alter, repair or improve the Licensed Premises, either before or after the execution hereof, have been made by **CITY** or its agents to **LICENSEE** unless the same are contained herein or made a part hereof by specific reference herein.

## 6. UTILITIES

- 6.1. **LICENSEE** shall furnish and pay for all gas, water, electricity, sewer, cable TV or other utilities, if any, which may be necessary for its operations as authorized herein on the Licensed Premises. **LICENSEE** further agrees to pay all monthly charges associated with effective maintenance of said operation. Should connection or reconnection of any utility become necessary, **LICENSEE** agrees to pay any expenses therefore, unless the same is caused by any acts undertaken by **CITY**.

## 7. IMPROVEMENTS

- 7.1. **LICENSEE** shall not construct, or allow to be constructed, any improvements or structures on the Licensed Premises nor shall **LICENSEE** make, or allow to be made, any alterations to the Licensed Premises without the prior written approval of the **CITY** through the **DIRECTOR** and any and all other necessary departments, boards or commissions of the **CITY OF SAN ANTONIO**, including, but not limited to, the Historic and Design Review Commission.
- 7.2. **LICENSEE** covenants that it shall not bind, or attempt to bind, **CITY** for the payment of any money in connection with the construction, repair, alteration, addition or reconstruction in, on or about the Licensed Premises. Further, **LICENSEE** agrees to remove, within thirty (30) days after filing, by payment or provisions for bonding, any mechanic's or materialman's liens filed against the Licensed Premises and to indemnify **CITY** in connection with such liens to the extent of any damages, expenses, attorney's fees, or court costs incurred by **CITY**.

## 8. RULES AND REGULATIONS AND PROHIBITED USES

- 8.1. **LICENSEE** shall observe and comply with all laws and ordinances of the **CITY** affecting **LICENSEE'S** business, including but not limited to, the **CITY'S** noise ordinance and the provisions concerning operation of businesses in the River Walk area in the Downtown Central Business District.
- 8.2. No advertisements, signs, decorations or displays shall be placed in, on, or about the Licensed Premises without the prior written approval of the **CITY** through the Director, Downtown Operations Department, or her designee, and any and all other necessary departments, boards or commissions of the **CITY OF SAN ANTONIO**, including, but not limited to, the Historic and Design Review Commission. **LICENSEE** agrees to remove all signs from the Licensed Premises when **LICENSEE** vacates the Licensed Premises.
- 8.3. **LICENSEE** shall be allowed to place only those chairs, tables, umbrellas, hostess stations, and/or any other furnishings as approved by **CITY** and all applicable boards and/or commissions of the City of San Antonio, including, but not limited to the Historic and Design Review Commission (HDRC), such approval not to be unreasonably withheld.
- 8.4. **LICENSEE** may not obstruct any entrance to the business establishment with any type of furnishing used for dining. City has the right to request the removal of dining furnishings, if **LICENSEE** dining area and equipment is not presentable, as reasonably determined by the Director, Downtown Operations Department, or her designee.
- 8.5. Encroachment on the public sidewalk beyond the authorized Licensed Premises or into the Public Right-of-Way is not permitted.
- 8.6. **LICENSEE may only use Licensed Premises for dining and the service of non-alcoholic and alcoholic beverages.**
- 8.7. No activity or method of operation shall be allowed in, on, or about the Licensed Premises, which exposes patrons thereof to nudity or to partial nudity. For the purposes of this provision, the following definitions apply:
  - 8.7.1. Nudity means total absence of clothing or covering for the human body.

- 8.7.2. Partial nudity means exposure of the female breast or the exposure of the male or female pubic area or buttocks.
- 8.7.3. Any nudity as specified above will constitute a violation of this Article and result in an Event of Default.
- 8.8. The operation of massage business, tanning salon, gambling casino, or gambling of any nature shall not be allowed in, on, or about the Licensed Premises.
- 8.9. Discrimination because of race, color, sex, age, handicap, or national origin, directly or indirectly, in employment or in the use of or admission to the Licensed Premises is prohibited.
- 8.10. **LICENSEE** shall not, except as may otherwise be permitted by applicable laws and regulations, pay less than the minimum wage required by Federal and State statutes and **CITY** ordinances to persons employed in its operations hereunder.
- 8.11. **LICENSEE** shall not place speakers or amplified music on or near the patio of the Licensed Premises or in any other location outside the enclosed building on any side of the premises that can be seen from the San Antonio River. **LICENSEE** shall comply with **CITY'S** laws pertaining to noise. **LICENSEE** agrees to comply with any requests by the **CITY'S** park police, police officers or noise abatement officers to close the windows and doors of **LICENSEE'S** business establishment after the hour of 11:00 p.m., except as necessary for entry to and exit from the establishment. Such requests shall be limited to instances in which the officers have measured a nighttime noise decibel level at the establishment exceeding the requirements of Chapter 21 of the City Code of the City of San Antonio immediately prior to making such request. Failure to comply with this section may, at **CITY'S** option, constitute default under this License Agreement.
- 8.12. **LICENSEE** shall not engage in, or allow its employees, agents, invitees, guests or any other person to engage in vending on the Premises, other than the ordinary and customary restaurant service with wait staff bringing and food and beverages to **LICENSEE'S** customers seated at tables within the Premises. Notwithstanding the preceding, **LICENSEE** shall be allowed to provide entertainment to its customers in the form of traditional Mariachis so long as such Mariachis obtain a vending permit under section 16-236(b) of the City Code of San Antonio, Texas, which controls vending on City owned property in the City's Downtown Business District.

## 9. MAINTENANCE OF PROPERTY

- 9.1. **LICENSEE** shall, at all times, maintain the sidewalk adjacent to the Licensed Premises free from obstructions of any kind and shall maintain a minimum clearance of six (6) feet on the sidewalk adjacent to the Licensed Premises free and clear of any tables or other property, and **LICENSEE** shall not use any of said sidewalk area in the exercise of privileges granted herein, except to pass to and from the Licensed Premises; however, **LICENSEE'S** use may at no time obstruct access to the six (6') feet public right-of-way.
- 9.2. **LICENSEE** shall, at all times, keep or cause to be kept the Licensed Premises free of litter, trash, paper and other waste and shall place same in standard trash containers in the street or in other appropriate locations and shall conform with all applicable garbage, sanitary and health regulations of the **CITY**.
- 9.3. **LICENSEE** shall at its sole expense, keep the Premises in good order, repair, and leasable condition at all times during the Term and shall promptly repair all damages to the Premises or

replace any broken fixtures or appurtenances within a reasonable period of time. All such repairs and replacements shall be subject to the approval of the **CITY** through the Director, Downtown Operations Department, or her designee, and any and all other necessary departments, boards, or commissions of the CITY OF SAN ANTONIO, including, but not limited to, the Historic and Design Review Commission. If **LICENSEE** does not promptly make such arrangements, **CITY** may, but is not required to, make such repairs and replacements and the costs paid or incurred by **CITY** for such repairs and replacements shall be deemed additional rent due and payable forthwith.

- 9.4. **LICENSEE** will, at the termination of this License Agreement, return the Licensed Premises to **CITY** in as good condition as at the commencement of the term hereof, usual wear and tear, acts of God, or unavoidable accident only accepted.
- 9.5. **LICENSEE** agrees to hold **CITY** harmless for any theft, damages or destruction of signs, goods and/or other property of **LICENSEE** both during the term of this License and as so left on the Licensed Premises after **LICENSEE** vacates the Licensed Premises. If said signs, goods and any other property placed by **LICENSEE** upon the Licensed Premises are not removed by it within thirty (30) days after the Licensed Premises are vacated, then the **CITY** may remove same without further notice or liability therefore.

#### **10. TAXES AND LICENSES**

- 10.1. **LICENSEE** shall pay, on or before their respective due dates, to the appropriate collecting authority, all Federal, State and local taxes and fees which are now or may hereafter be levied upon the Licensed Premises, or upon **LICENSEE**, or upon the business conducted on the Licensed Premises, or upon any of **LICENSEE'S** property used in connection therewith; and shall maintain in current status all Federal, State and local licenses and permits required for the operation of the business conducted by **LICENSEE**. Failure to comply with the foregoing provisions shall constitute grounds for termination of this License Agreement by the **CITY**.

#### **11. ASSIGNMENT AND SUBLETTING**

- 11.1. Except as to the parent, subsidiary or similarly affiliated company or sale of the Sheraton Gunter Hotel to an unrelated third party, **LICENSEE** shall not assign this License, or allow same to be assigned by operation of law or otherwise, or sublet/subcontract the Licensed Premises or any part thereof without the prior written consent of **CITY** which may be given only by or pursuant to an ordinance enacted by the City Council of San Antonio, Texas. Any assignment or subletting by **LICENSEE** without such permission shall constitute grounds for termination of this License Agreement by the **CITY**.
- 11.2. Without the prior written consent of **LICENSEE**, **CITY** shall have the right to transfer and assign, in whole or in part, any of its rights and obligations under this License and in the property referred to herein; and, to the extent that such assignee assumes **CITY'S** obligations hereunder, **CITY** shall, by virtue of such assignment, be released from such obligation.
- 11.3. The receipt by the **CITY** of rent from an assignee, or occupant of the Licensed Premises shall not be deemed a waiver of the covenant in this License Agreement against assignment and or an acceptance of the assignee, or occupant as a **LICENSEE**, or a release of the **LICENSEE** from further observance or performance by the **LICENSEE** of the covenants contained in this License Agreement. No provision of this License shall be deemed to have been waived by the **CITY** unless such waiver is in writing and signed by the **CITY**.

## 12. DEFAULT AND REMEDIES

- 12.1. The following events shall be deemed to be events of default by **LICENSEE** under this License Agreement:
- 12.1.1. The subletting of any part of the Licensed Premises.
  - 12.1.2. The encroachment on the Public Right-of-Way beyond the authorized Licensed Premises.
  - 12.1.3. **LICENSEE** shall fail to comply with any term, provision or covenant of this License Agreement, other than the payment of rent, and shall not cure such failure within thirty (30) days after written notice thereof to **LICENSEE**, unless **LICENSEE** has undertaken to effect such cure within such thirty (30) day period and is diligently prosecuting the same to completion.
  - 12.1.4. **LICENSEE** shall fail to pay any installment of rent as provided for in this License Agreement and such failure shall continue for a period of ten (10) days following the date on which it is due and owing.
- 12.2. Upon the occurrence of an event of default as heretofore provided, **CITY** may, at its option, declare this License Agreement, and all rights and interests created by it, terminated. Upon **CITY** electing to terminate, this License Agreement shall cease and come to an end as if that were the day originally fixed herein for the expiration of the term hereof; or **CITY**, its agents or attorney may, at its option, resume possession of the Licensed Premises and re-let the same for the remainder of the original term for the best rent **CITY**, its agents or attorney may obtain for the account of **LICENSEE** without relieving **LICENSEE** of any liability hereunder as to rent still due and owing in this License Agreement, or any extension thereof, as applicable. **LICENSEE** shall make good any deficiency.
- 12.3. Any termination of this License Agreement as herein provided, shall not relieve **LICENSEE** from the payment of any sum or sums that shall then be due and payable to **CITY** hereunder, or any claim for damages then or theretofore accruing against **LICENSEE** hereunder, and any such sum or sums or claim for damages by any remedy provided for by law, or from recovering damages from **LICENSEE** for any default hereunder. All rights, options and remedies of **CITY** contained in this License Agreement shall be cumulative of the other, and **CITY** shall have the right to pursue any one or all of such remedies or any other remedy or relief available at law or in equity, whether or not stated in this License Agreement. No waiver by **CITY** of a breach of any of the covenants, conditions or restrictions of this License Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition or restriction herein contained.
- 12.4. Upon any such expiration or termination of this License Agreement, **LICENSEE** shall quit and peacefully surrender the Licensed Premises to **CITY**, and **CITY**, upon or at any time after such expiration or termination, may, without further notice, enter upon and re-enter the Licensed Premises and possess and repossess itself thereof, by force, summary proceedings, ejectment or otherwise, and may dispossess **LICENSEE** and remove **LICENSEE** and all other persons and property, including all signs, furniture, trade fixtures, and other personal property which may be disputed as to its status as fixtures, from the Licensed Premises, and such action by **CITY** shall not constitute **CITY'S** acceptance of abandonment and surrender of the Licensed Premises by **LICENSEE** nor prevent **CITY** from pursuing all legal remedies available to it.

### 13. INDEMNIFICATION

- 13.1. LICENSEE covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to LICENSEE'S activities under this Agreement, including any acts or omissions of LICENSEE, any agent, officer, director, representative, employee, consultant or subcontractor of LICENSEE, and their respective officers, agents employees, directors and representatives while in the exercise of performance of the rights or duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT LICENSEE AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.
- 13.2. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. LICENSEE shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or LICENSEE known to LICENSEE related to or arising out of LICENSEE's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at LICENSEE's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving LICENSEE of any of its obligations under this paragraph.

### 14. INSURANCE REQUIREMENTS

- 14.1. Prior to the commencement of any work under this License Agreement, LICENSEE shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the CITY'S Downtown Operations Department, which shall be clearly labeled "Palm Restaurant San Antonio Sidewalk Patio License Agreement" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The CITY will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the CITY. The CITY shall have no duty to pay or perform under this License Agreement until such certificate and endorsements have been received and approved by the CITY'S Downtown Operations Department. No officer or employee, other than the CITY'S Risk Manager, shall have authority to waive this requirement.
- 14.2. The CITY reserves the right to review the insurance requirements of this Article during the effective period of this License Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by CITY'S Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding

this **License Agreement**. In no instance will **CITY** allow modification whereupon **CITY** may incur increased risk.

14.3. **LICENSEE'S** financial integrity is of interest to the **CITY**; therefore, subject to **LICENSEE'S** right to maintain reasonable deductibles in such amounts as are approved by the **CITY**, **LICENSEE** shall obtain and maintain in full force and effect for the duration of this **License Agreement**, and any extension hereof, at **LICENSEE'S** sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed:

	TYPE	AMOUNT
1.	Workers' Compensation and Employers Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
2.	Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Broad Form Contractual Liability d. Personal Injury	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence and \$2,000,000.00 Aggregate, or its equivalent.
3.	Comprehensive Automobile Liability ** a. Owned/Leased Vehicles b. Non-owned Vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$500,000 per occurrence or its equivalent
4.	Property Insurance: For physical damage to the property of <b>LICENSEE</b> , including improvements and betterment to the LICENSED PREMISES.	Coverage for a minimum of eighty percent (80%) of the Replacement Cost of <b>LICENSEE'S</b> property
5.	Liquor Liability**	\$1,000,000 per occurrence, aggregate of \$3,000,000

**\*\* If Applicable.**

14.4. The **CITY** shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the **CITY**, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). **LICENSEE** shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to **CITY** at the address provided below within 10 days of the requested change. **LICENSEE** shall pay any costs incurred resulting from said changes.

City of San Antonio  
Attn: Downtown Operations Department  
P.O. Box 839966  
San Antonio, Texas 78283-3966

- 14.5. **LICENSEE** agrees that with respect to the above-required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:
- 14.5.1. Name the **CITY**, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the **CITY**, with the exception of the workers' compensation and professional liability policies;
  - 14.5.2. Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the **CITY** is an additional insured shown on the policy;
  - 14.5.3. Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the **CITY**.
  - 14.5.4. Provide thirty (30) calendar days advance written notice directly to **CITY** of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium
- 14.6. Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, **LICENSEE** shall provide a replacement Certificate of Insurance and applicable endorsements to **CITY**. **CITY** shall have the option to suspend **LICENSEE'S** performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this **License Agreement**.
- 14.7. If **LICENSEE** fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the **CITY** may initiate **License Agreement** termination proceedings on the first event of default. The **CITY** may upon **LICENSEE'S** failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the **CITY** shall have the right to order **LICENSEE** to stop the use of the Premises hereunder until **LICENSEE** demonstrates compliance with the requirements hereof.
- 14.8. Nothing herein contained shall be construed as limiting in any way the extent to which **LICENSEE** may be held responsible for payments of damages to persons or property resulting from **LICENSEE'S** or its subcontractors' performance of the work covered under this **License Agreement**.
- 14.9. It is agreed that **LICENSEE'S** insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this **License Agreement**.
- 14.10. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this **License Agreement**.
- 14.11. All personal property placed in the Licensed Premises shall be at the sole risk of **LICENSEE**. **CITY** shall not be liable, and **LICENSEE** waives all claims for any damage either to the person or property of **LICENSEE** or to other persons: (i) due to the Licensed Premises or any part of appurtenances thereof becoming out of repair; (ii) arising from bursting or leaking of water, gas, waste pipes, or defective wiring or excessive or deficient electrical current (unless caused by the sole negligence or willful misconduct of **CITY** or its elected officials, employees, officers, directors, volunteers and/or representatives); (iii) from any act or omission of employees, or other occupants of the Licensed Premises, or any other persons; or (iv) due to the happening of any

accident in or about the Licensed Premises. **LICENSEE** shall save and hold harmless **CITY** from any claims arising out of damage to **LICENSEE'S** property or damage to **LICENSEE'S** business, including subrogation claims by **LICENSEE'S** insurers.

#### **15. RESERVATIONS: CITY**

- 15.1. **CITY** reserves the right to enter the Licensed Premises at all reasonable times for the purpose of examining, inspecting or making repairs as herein provided. **LICENSEE** shall not be entitled to an abatement or reduction of rent because of such entry, nor shall said entry be deemed an actual or constructive eviction of **LICENSEE** from the Licensed Premises. Should construction or other activity by **CITY** prevent **LICENSEE'S** use of the Licensed Premises for the purposes outlined herein for longer than ten (10) days, then **LICENSEE** shall be entitled to an abatement of rent under this License Agreement for such period of time and, at **LICENSEE'S** option, this License Agreement may be terminated or extended for the same number of days **LICENSEE'S** use of Licensed Premises was denied.
- 15.2. No provision of this License Agreement shall operate in any manner to prevent **CITY** from permitting displays, tournaments or amusements, or parades for the benefit of the public.
- 15.3. **CITY** park police and other safety personnel shall have the right of entry on and into the Licensed Premises as needed to investigate any circumstances, conditions, or person(s) that may appear to be suspicious. **LICENSEE** shall cooperate with all reasonable requests by such personnel to facilitate public safety and orderly conduct by persons in the River Walk and Downtown Central Business District. **LICENSEE** expressly understands and agrees that **CITY** has not agreed to act and does not act as an insurer of **LICENSEE'S** property and does not guarantee security against theft, vandalism, or injury of whatever nature and kind to persons or property.

#### **16. HOLDING OVER**

- 16.1. Should **LICENSEE** hold over the Licensed Premises, or any part thereof, after the expiration or termination of the term of this License Agreement, unless otherwise agreed in writing, such holding over shall constitute and be construed as a tenancy from month to month only, at a rental equal to one-hundred twenty-five (125%) of the amount of the rent paid for the last month of the term of this License Agreement. The inclusion of the preceding sentence shall not be construed as **CITY'S** consent for the **LICENSEE** to hold over.

#### **17. QUIET ENJOYMENT**

- 17.1. **CITY** covenants and agrees, subject to the provisions of this License Agreement, that **LICENSEE**, on paying the rent and all other charges in this License Agreement provided for and observing and performing the covenants, agreements and conditions of this License Agreement on its part to be observed and performed, shall lawfully and quietly hold, occupy and enjoy the Licensed Premises during the term without hindrance or molestation of any kind whatsoever.

#### **18. CONFLICT OF INTEREST**

- 18.1. **LICENSEE** acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined therein, from having a financial interest in any contract with the City or any City agency such as City owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a

party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

- 18.2. **LICENSEE** warrants and certifies, and this License is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City or any of its agencies such as City owned utilities.

## 19. SEPARABILITY

- 19.1. If any clause or provision of this License Agreement is illegal, invalid or unenforceable under present or future laws effective during the term of this License Agreement, then and in that event it is the intention of the parties hereto that the remainder of this License Agreement shall not be affected thereby, and it is also the intention of the parties to this License Agreement that in lieu of each clause or provision of this License Agreement that is illegal, invalid or unenforceable, there be added as a part of this License Agreement a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

## 20. NOTICES

- 20.1. Notices to **CITY** required or appropriate under this License Agreement shall be deemed sufficient if in writing and mailed, Registered or Certified mail, Postage Prepaid, addressed to:

City of San Antonio  
Downtown Operations Department  
P.O. Box 839966  
San Antonio, Texas 78283-3966

City of San Antonio  
City Clerk's Office  
City Hall-Second Floor  
P.O. Box 839966  
San Antonio, Texas 78283-3966

or to such other address as may have been designated in writing by the City Manager of the CITY OF SAN ANTONIO from time to time.

Notices to **LICENSEE** shall be deemed sufficient if in writing and mailed, Registered or Certified mail, Postage Prepaid, addressed to **LICENSEE** at:

**Mr. Lance Byrd  
General Manager  
Palm Restaurant San Antonio  
233 E. Houston Street  
San Antonio, Texas 78205**

Or at such other address on file with the City Clerk as **LICENSEE** may provide from time to time in writing to **CITY**.

## 21. PARTIES BOUND

- 21.1. If there shall be more than one party designated as **LICENSEE** in this License, they shall each be bound jointly and severally hereunder.

- 21.2. The covenants and agreements herein contained shall insure to the benefit of and be binding upon the parties hereto; their respective heirs, legal representatives, successors, and such assigns as have been approved by CITY.

## **22. TEXAS LAW TO APPLY**

- 22.1. **THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**

## **23. LIEN FOR RENT**

- 23.1. In consideration of the mutual benefits arising under this License Agreement, **LICENSEE** does hereby mortgage, and grant a security interest under the Texas Business and Commerce Code unto **CITY**, upon all property of **LICENSEE** now or hereafter placed in or upon the Licensed Premises (except such part of any property or merchandise as may be exchanged, replaced or sold from time to time in the ordinary course of operations or trade), and such property is hereby subjected to a lien and security interest in favor of **CITY** and shall be and remain subject to such a lien and security interest in favor of **CITY** for payment of all rents and other sums agreed to be paid by **LICENSEE** herein. At **CITY'S** request, **LICENSEE** shall execute and deliver to **CITY** a financing statement appropriate for use under said Code. Such lien and security interest shall be in addition to and cumulative of **CITY'S** liens provided by law.

## **24. RELATIONSHIPS OF PARTIES**

- 24.1. Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of principal and agent, partners, joint ventures, or any other similar such relationships between the parties hereto other than that of landlord and **LICENSEE**.

## **25. GENDER**

- 25.1. Words of gender used in this License Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

## **26. CAPTIONS**

- 26.1. The captions contained in this License Agreement are for convenience of reference only and in no way limit or enlarge the terms and conditions of this License Agreement.

## **27. ENTIRE AGREEMENT/AMENDMENT**

- 27.1. This License Agreement, together with its attachments and the authorizing ordinance or ordinances, in writing, constitutes the entire agreement between the parties, any other written or parole agreement with **CITY** being expressly waived by **LICENSEE**.
- 27.2. No amendment, modification or alteration of the terms of this License Agreement shall be binding unless the same is in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

27.3. It is understood that the Charter of the CITY requires that all contracts with the CITY be in writing and adopted by ordinance. All amendments also need approval evidenced by an ordinance.

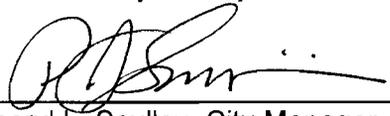
**28. AUTHORITY**

28.1. The signer of this License Agreement for LICENSEE hereby represents and warrants that he or she has full authority to execute this License Agreement on behalf of LICENSEE.

**CITY OF SAN ANTONIO,  
A Texas Municipal Corporation**

**LICENSEE:**

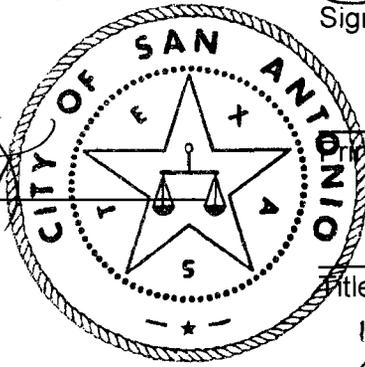
**Palm Restaurant San Antonio, Inc.**

By:   
Sheryl L. Sculley, City Manager

  
Signature

ATTEST:

  
City Clerk



DAVID MIDDLETON  
Printed Name

Vice President Development  
Title

APPROVED AS TO FORM:

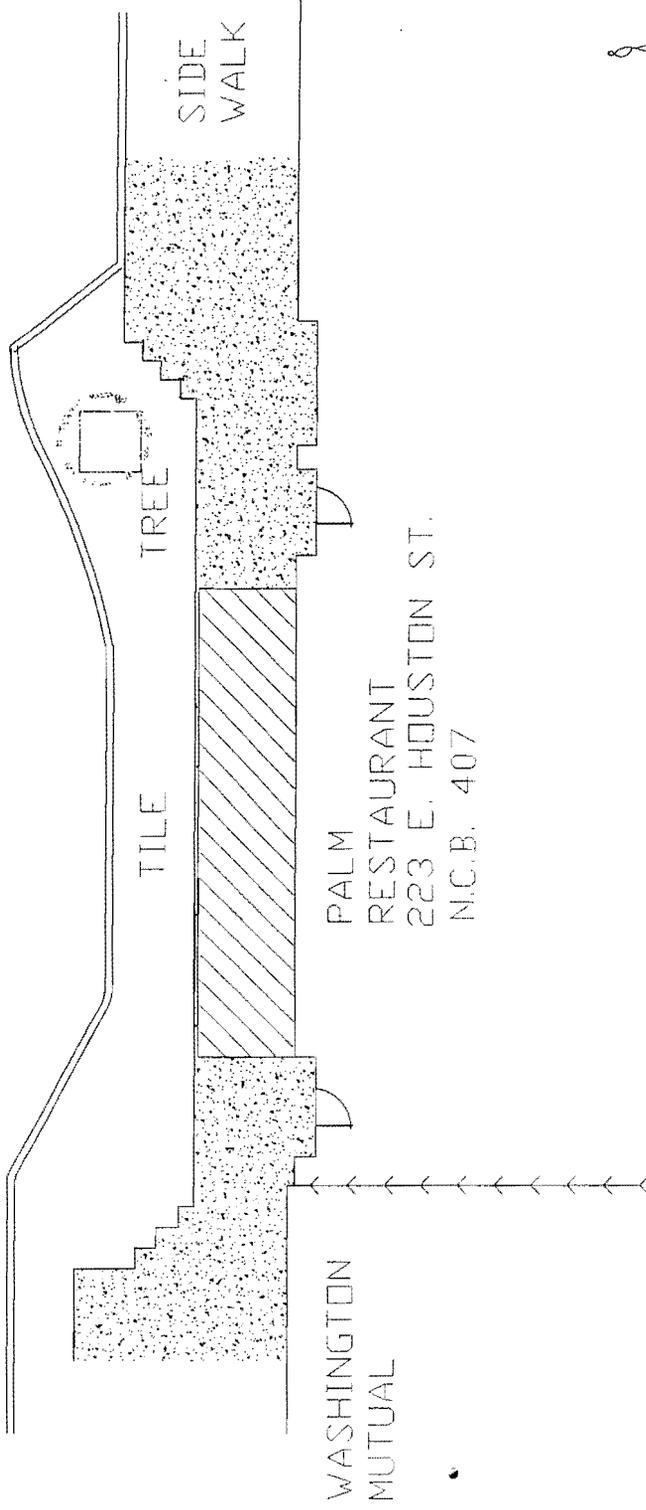
  
City Attorney

1730 RHODE ISLAND AVE NW,  
Suite 900-  
Address

WASHINGTON DC, 20036  
City, State, and Zip Code

202-775-7256  
Area Code/Telephone Number

E. HOUSTON ST.



A DRAWING SHOWING  
 AN AREA OF:  
 38'x8' = 304.0 SQ.FT.



City of San Antonio  
 Parks and Recreation  
 Department

City of San Antonio  
 Parks and Recreation  
 Department

CITY OF SAN ANTONIO  
 PARKS AND RECREATION DEPARTMENT  
 PARK PROJECT SERVICES  
 DIVISION  
 SAN ANTONIO, TX 78244  
 P.O. BOX 9944  
 SAN ANTONIO, TX 78210-2929  
 TEL: (210) 202-5879

PALM RESTAURANT  
 223 E. HOUSTON ST.  
 SAN ANTONIO, TEXAS  
 LEASE AREA



DATE: 01/08  
 DRAWN BY: [Name]  
 CHECKED BY: [Name]  
 SCALE: 1" = 10'

**City of San Antonio**  
**Discretionary Contracts Disclosure**

*For use of this form, see Section 2-59 through 2-61 of the City Code (Ethics Code)  
Attach additional sheets if space provided is not sufficient.*

(1) Identify any individual or business entity<sup>1</sup> that is a **party** to the discretionary contract:

SAN ANTONIO PALM - INC - DBA - PALM RESTAURANT

(2) Identify any individual or business entity which is a **partner, parent** or **subsidiary** business entity, of any individual or business entity identified above in Box (1):

No partner, parent or subsidiary; or

List partner, parent or subsidiary of each party to the contract and identify the corresponding party:  
MR. WALLY CANZI, JR  
MR. BRUCE E. BOZZI

(3) Identify any individual or business entity that would be a **subcontractor** on the discretionary contract.

No subcontractor(s); or

List subcontractors:

(4) Identify any **lobbyist** or **public relations firm** employed by any party to the discretionary contract for purposes related to seeking the discretionary contract.

No lobbyist or public relations firm employed; or

List lobbyists or public relations firms:

<sup>1</sup> A *business entity* means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law. A sole proprietor should list the name of the individual and the d/b/a, if any.

**(5) Political Contributions**

List all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made to any *current or former member* of City Council, any *candidate* for City Council, or to any *political action committee* that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under Box (1), (2), (3) or (4) above, or by the officers, owners of any business entity listed in Box (1), (2) or (3):

No contributions made; If contributions made, list below:

By Whom Made:	To Whom Made:	Amount:	Date of Contribution:

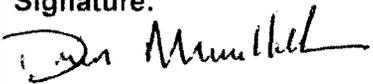
**(6) Disclosures in Proposals**

Any individual or business entity seeking a discretionary contract with the city must disclose any known facts which, reasonably understood, raise a question<sup>2</sup> as to whether any city official or employee would violate Section 2-43 of the City Code (Ethics Code), ("conflicts of interest") by participating in official action relating to the discretionary contract.

Party not aware of facts which would raise a "conflicts-of-interest" issue under Section 2-43 of the City Code; or

Party aware of the following facts:

This form is required to be supplemented in the event there is any change in the information before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed, whichever occurs first.

Signature: 	Title: <i>VP Development</i> Company or D/B/A: <i>Palm Management Corp</i>	Date: <i>4-8-08</i>
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<sup>2</sup> For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.



CMS or Ordinance Number: OR00000200805290446

TSLGRS File Code: 1000-05

Document Title:

ORD - License for use of 304 square feet of public sidewalk for patio dining purposes.

**Ordinance Date:**  
**5/29/2008**