

STATE OF TEXAS                   §  
   §  
 COUNTY OF FORT BEND       §

### **LEASE AGREEMENT**

THIS AGREEMENT made and entered into by and between **FORT BEND COUNTY**, a body corporate and politic under the laws of the State of Texas, (hereinafter "Lessor"), and **JESSICA A. VAIANA DBA SPECIAL TREATS**, (hereinafter "Lessee").

In consideration of the mutual covenants and agreements herein set forth, and other good and valuable consideration, Lessor does hereby lease to Lessee, and Lessee does hereby lease from Lessor, those certain premises, being a portion of the Fort Bend County Justice Center property located at 1422 Eugene Heimann Circle, Richmond, Fort Bend County, Texas (hereinafter "Leased Premises"), particularly identified in Exhibit A, attached hereto and incorporated herein by reference.

#### **ARTICLE I** **Term of Lease**

This Lease Agreement shall commence on April 1, 2014, and end on September 30, 2014, renewable annually, if mutually agreeable by both parties. This Agreement may be terminated by either party for any reason by giving thirty (30) days written notice of the intent to terminate.

#### **ARTICLE II** **Rent**

Lessee agrees and promises to pay to Lessor rent in the amount of \$25.00 per month, pre-paid monthly on the first calendar day of each month in the form of a check or money order made payable to Fort Bend County. The monthly rent shall be directed to Fort Bend County, Attn: Skye Brockermeyer, Facilities Department, 301 Jackson St. Richmond, TX. 77469. If the Lease Agreement is renewed, the rental amount will be determined upon mutual agreement of Lessor and Lessee.

#### **ARTICLE III** **Utilities**

There are no utilities available to Lessee at the Leased Premises. Lessee, as an operator of a self-contained food cart, acknowledges and agrees that it does not require utilities, including but not limited to the following: electricity, propane, water, sewer, garbage removal, charcoal, telephone and internet services.

## **ARTICLE IV**

### **Use**

4.01 Lessor intends make the Leased Premises available to multiple vendors for the purpose of operating food carts for the sale of food and beverage products. Lessee intends to lease a portion of the Leased Premises to operate a food cart for the sale of various fresh, prepackaged and single-serving items, such as fresh fruits, nuts, flavored popcorn, trail mix, cookies, biscotti, muffins, pretzels and granola/candy bars, etc.

4.02 Lessee shall not have an exclusive right to Leased Premises. Lessor may execute up to a maximum of five (5) leases for vendors to sell goods within the Leased Premises at the same time.

4.03 Although a maximum of five (5) leases or permits are available to sell food or beverage products within the Leased Premises, each Lessee shall be allowed to be a party to no more than one (1) lease for the Leased Premises at a time.

4.04 Lessee must obtain and maintain required permits issued by the City of Richmond, Texas. Any such permits must be made available and provided to Lessor upon demand. Failure to maintain such permits may result in termination of this Lease Agreement.

4.05 Lessee is strictly limited to the sale of food and beverage products and, shall not prepare or cook any food within the Leased Premises.

4.06 Lessee's use of the Leased Premises and use thereon in no way shall impede the free movement and circulation of traffic and pedestrians.

4.07 The maximum size cart to be used within the Leased Premises shall be eight feet long by 4 feet wide by 8 feet high (8' x 4' x 8').

4.08 Lessee must remove its food cart and all related equipment on a daily basis. Lessee is strictly prohibited from causing any of its items to be stored within the Leased Premises overnight.

4.09 Lessee shall have the right to erect temporary signs on the portion of the Leased Premises being utilized by Lessee. However, any proposed signage must be reviewed and approved by Lessor prior to placement. Lessee shall remove all signs when Lessee is not operating within the Leased Premises.

## **ARTICLE V**

### **Maintenance and Surrender**

5.01 Lessee shall be responsible for maintaining a clean site including, but not limited to the removal of all trash, food waste and debris on a daily basis. No grease or food stains shall result

from Lessee's activity. Any expense incurred by Lessor to clean and/or maintain the portion of the Leased Premises utilized by Lessee shall be the responsibility of the Lessee.

5.02 Lessee agrees to properly and diligently make such repairs and/or replacements to the Leased Premises as are made necessary by the negligence or willful acts of Lessee, its agents, servants, employees, licensees, business guests or invitees and, at the termination or expiration of this lease. Lessee agrees to surrender and deliver the Leased Premises to Lessor in good order and condition, natural deterioration from ordinary wear and tear. All maintenance and repairs shall be done with materials and equipment of a quality equal to that called for in the original plans and specifications and shall be in accordance with the then existing federal, state and local regulations regarding health and safety.

5.03 Lessee's negligence and/or failure to observe, keep or perform any of its obligations to maintain and repair the Leased Premises in the time and manner provided in this Article shall constitute a default hereunder and if such default shall continue for fifteen (15) days after notice thereof, Lessor shall have the right to pursue the rights and remedies provided Lessor herein below.

## **ARTICLE VI**

### **Insurance and Waiver of Subrogation**

6.01 Lessee shall obtain and maintain throughout the term of this lease, a certificate of insurance indicating coverage in the amounts stated below and provide that such insurance shall not be canceled, except on sixty (60) days' prior written notice to County. All policies shall be underwritten by insurance companies maintaining A.M. Best's ratings of A-VII or higher on insurance of the following types and minimum limits:

6.011 Worker's Compensation insurance in accordance with the laws of the State of Texas. Substitute policies other than Workers' Compensation Insurance will not be allowed.

6.012 Employers' Liability insurance with limits of not less than \$500,000 per injury by accident, \$500,000 per injury by disease, and \$500,000 per bodily injury by disease.

6.013 Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.

6.014 Business Automobile Liability coverage applying to owned, non-owned and hired automobiles with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage combined.

6.015 Lessee is responsible to maintain insurance on all personal property belonging to Lessee.

6.02 Lessor and members of Fort Bend County Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation and Professional Liability (if required). All Liability policies written on behalf of Lessee shall contain a waiver of subrogation in favor of Lessor and members of Commissioners Court.

6.03 Lessee shall deliver to Lessor, prior to the lease commencement date, certificates or affidavits of such insurance and shall, at all times during the lease term, deliver to Lessor upon request true and correct copies of said insurance policies. Lessee shall deliver to Lessor certificates of renewal at least thirty (30) days prior to the expiration date of each such policy and copies of new policies at least sixty (60) days prior to terminating any such existing policies.

6.04 Lessee and Lessor hereby waive all claims, rights of recovery and causes of action that either party or any party claiming by, through or under such party may now or hereafter have by subrogation or otherwise against the other party for any loss or damage that may occur to the Leased Premises, Lessee's improvements or any of the contents of any of the foregoing by reason of fire or other casualty, or by reason of any other cause except gross negligence or willful misconduct (thus including simple negligence of the parties hereto or agents, employees or contractors), that could have been insured against under the terms of (1) in the case of Lessor, the standard fire and extended coverage insurance policies available in Texas at the time of the casualty and (2) in the case of Lessee, the fire and extended coverage insurance policy required to be obtained and maintained under 6.01; provided however, that the waiver set forth in this 6.04 shall (i) be ineffective against any insurer of Lessor or Lessee to the extent that the waiver is prohibited by the laws or insurance regulations of Texas or would invalidate any insurance coverage of Lessor or Lessee and (ii) not apply to any deductibles on insurance policies carried by Lessor or to any coinsurance penalty which Lessor might sustain. Lessor and Lessee hereby agree to cause (if available) an endorsement to be issued to their respective insurance policies recognizing this waiver of subrogation.

6.05 To the extent allowed by law Lessee hereby assumes liability for, and agrees to defend, indemnify and hold harmless, Lessor and Lessor's agents, contractors and employees from and against, all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements (including court costs and reasonable attorneys fees) resulting from any injuries to or death of any person or damage to any property occurring during the lease terms in or about the Leased Premises.

6.06 If required coverage is written on a claims-made basis, Lessee warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the Lease Agreement and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning from the time the tenancy is completed.

6.07 Approval of the insurance by Lessor shall not relieve or decrease the liability of Lessee.

## ARTICLE VII Indemnification

**7.01 LESSEE SHALL SAVE HARMLESS LESSOR FROM AND AGAINST ALL CLAIMS, LIABILITY, AND EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, ARISING FROM ACTIVITIES OF LESSEE, ITS AGENTS, SERVANTS OR EMPLOYEES, PERFORMED UNDER THIS LEASE AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, ERROR, OR OMISSION OF LESSEE OR ANY OF LESSEE'S AGENTS, SERVANTS OR EMPLOYEES.**

7.02 Lessee shall timely report all such matters to Lessor and shall, upon receipt of any such claim, demand, suit, action, proceeding, lien or judgment, not later than the fifteenth day of each month; provide Lessor with a written report on each such matter, setting forth the status of each matter, the schedule or planned proceedings with respect to each matter and the cooperation of assistance, if any, of Lessor required by Lessee in the defense of each matter.

7.03 Lessee's duty to defend, indemnify and hold Lessor harmless shall be absolute. It shall not abate or end by reason of the expiration or termination of this Lease Agreement unless otherwise agreed by Lessor in writing. The provisions of this section shall survive the termination of the Lease Agreement and shall remain in full force and effect with respect to all such matters no matter when they arise.

7.04 In the event of any dispute between the parties as to whether a claim, demand, suit, action proceeding, lien or judgment appears to have been caused by or appears to have arisen out of or in connection with acts or omissions of Lessee, Lessee shall never-the-less fully defend such claim, demand, suit, action, proceeding, lien or judgment until and unless there is a determination by a court of competent jurisdiction that the acts and omissions of Lessee are not at issue in the matter.

7.05 Lessee's indemnification shall cover, and Lessee agrees to indemnify Lessor, in the event Lessor is found to have been negligent for having selected Lessee to lease the property described in this Lease Agreement.

7.06 The provision by Lessee of insurance shall not limit the liability of Lessee under this Lease Agreement.

7.07 Lessee shall cause any and all of its contractors who may have a contract to perform or provide services within the Leased Premises under this Lease Agreement, to agree to indemnify Lessor and to hold it harmless from all claims for bodily injury and property damage that arise or may arise from said Lessee's operations. Such provisions shall be in form satisfactory to Lessor.

7.08 Loss Deduction Clause – Lessor shall be exempt from, and in no way liable, for any sums of money, which may represent a deductible in any insurance policy. The payment of deductibles shall be the sole responsibility of Lessee and/or its contractor providing such insurance.

**ARTICLE VIII**  
**Lessee's Property and Certain Notices**

8.01 Lessor shall not be liable for any damage to or loss of personal property placed within, on or about the Leased Premises by Lessee or others, resulting from fire, theft, explosion, flood, windstorm, hurricane, or other casualty caused by acts of God or by the acts or omissions of other occupants of other space in the building.

8.02 Lessee shall give immediate notice to Lessor in the event of fire or other accidents or casualties within the Leased Premises, as prescribed by the fire and extended coverage insurance policy required herein to be carried thereon, and further, Lessee shall give immediate notice to Lessor of any defects in any of the fixtures or equipment located in the Leased Premises or in or around the building.

**ARTICLE IX**  
**Assignment**

This Lease Agreement shall be binding on the heirs, successors and assigns of the parties hereto. Lessee shall not assign, sublet or transfer its interest or obligations in and under this lease without the prior, written consent of Lessor. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of Lessee or Lessor.

**ARTICLE X**  
**Inspection by Lessor**

Lessee shall permit Lessor and his agents to enter the Leased Premises at all times for the purpose of inspecting the same or for the purpose of maintaining or making repairs or alterations.

**ARTICLE XI**  
**Default**

In the event of any default by the Lessee in any of the terms, conditions, covenants, or agreements herein contained, Lessor may enforce the performance of this Agreement in any manner provided by law including forfeiting and terminating at Lessor's discretion if such default continues for a period of twenty (20) days after Lessor notifies Lessee in writing of such default and its intention to declare this Agreement terminated. Unless Lessee shall have completely removed and cured such default as aforesaid, this Agreement shall terminate and come to an end as if that were the day originally fixed herein for the expiration of the term. The Lessor's representatives shall have the right, without further notice or demand, to reenter and remove all persons and Lessee's property therefrom without being deemed guilty of any trespass, and also without prejudice to any remedies for breach of covenant.

**ARTICLE XII**  
**Miscellaneous**

12.01 All notices provided to be given under this lease shall be given by certified mail or registered mail, addressed to the proper party or delivered in person at the following addresses:

Lessee: Jessica A. Vaiana  
DBA Special Treats  
1414 Quiet Trail  
Sugar Land, Texas 77479

Lessor: Fort Bend County  
401 Jackson Street  
Richmond, Texas 77469  
Facsimile: 281-633-7022  
Attention: County Judge

Copy to: Facilities Management & Planning  
301 Jackson Street  
Richmond, Texas 77469  
Facsimile: 281-238-3577  
Attention: Don Brady

12.02 This lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this lease.

12.03 This lease 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 Fort Bend County, Texas.

12.04 In case any one or more of the provisions contained in this lease shall be for any reason held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions thereof and this lease shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

12.05 This lease constitutes the sole and only lease of the parties hereto and supersedes any prior understandings or written or oral leases between the parties respecting the within subject matter.

12.06 No amendment, modification, or alteration of the terms hereof shall be binding unless the same is in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

12.07 The rights and remedies provided by this lease are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

12.08 No waiver by the parties hereto of any default or breach of any term, condition, or covenant of this lease shall be deemed to be waiver of any other breach of the same or any other term, condition, or covenant contained herein.

12.09 Neither Lessor nor Lessee shall be required to perform any term, condition, or covenant in this lease so long as such performance is delayed or prevented by force majeure, which shall mean acts of God, strikes, lockouts, material or labor restrictions by any

governmental authority, civil riot, floods, and any other cause not reasonably within the control of Lessor or Lessee and which by the exercise of due diligence Lessor or Lessee is unable, wholly or in part, to prevent or overcome.

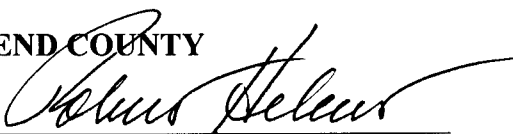
12.10 Time is of the essence of this lease.

12.11 Lessee's leasehold estate, created hereby and all of Lessee's rights, titles and interests, hereunder are subject and subordinate to any mortgage presently existing.

**IN WITNESS WHEREOF**, this Agreement has been executed in duplicate originals as follows:

**LESSOR**  
**FORT BEND COUNTY**


By:

  
Robert E. Hebert, County Judge

Date:


March 11, 2014

ATTEST:

  
Dianne Wilson, County Clerk



APPROVED:

  
Don Brady, Director, County Facilities Management & Planning

**LESSEE**  
**Jessica A. Vaiana**  
**dba Special Treats**

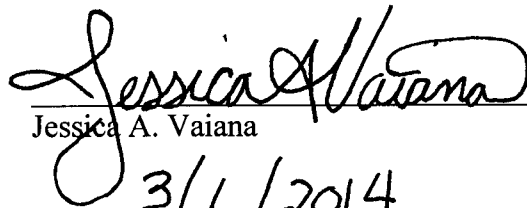
  
Jessica A. Vaiana  
3/1/2014  
Date



EXHIBIT A

