

Attachment B
Terms and Conditions - Retail Farmers Market Place

This is a 5 year rental agreement with a 5 year renewal option / extension.

5 Year Option – El Mercado Popular shall provide written notice of intent to exercise the option to renew this agreement one (1) year prior to agreement expiration. Both parties shall negotiate the renewal terms and approve the rental agreement 6 months prior to expiration.

El Mercado Popular shall be required to provide a minimum of 6 months notice prior to terminating this lease without cause. If El Mercado Popular violates any terms spelled out within this agreement the 14th DAA may cancel this lease with 30 days notice.

El Mercado Popular will pay for installing 2 new sets of gates in the existing chain link fence as indicated on attachment A. Plans for and installation of gates shall be approved by Fair management.

In the occurrence of any natural disaster both parties understand the planned facilities may not be available for a period of time. The 14th District Agricultural Association (14th DAA) will make every attempt possible to provide an alternate location for the market.

14th DAA will provide space for El Mercado Popular to place 2 storage containers for the storage of equipment related to set up and clean-up of market events.

El Mercado Popular shall be responsible for all clean-up, trash removal, trash disposal after each Sunday event. All areas used shall be clean by 5 PM on the Monday following each event.

El Mercado Popular will use the Harvest Building for music entertainment from 2 PM until 5 PM during markets. 14th DAA retains the right to use the Harvest Building for other events one Sunday per month and four (4) weeks prior to as well as the Sunday of the annual County Fair.

On the Sunday before the annual Fair the Farmers Market will relocate to the main parking area and use portable restrooms for this one time annual event.

There will not be a market on the Sunday of the annual Fair.

All outdoor public address system speakers shall be placed as shown on Attachment A and oriented in a south-south east direction.

The Harvest Building doors facing the Arts Building and the doors facing the Crosetti/Carnival parking lot shall be monitored at all times while music is playing so that the doors do not remain propped open.

The Retail Farmers Market Place will use the restroom facilities inside the Harvest Building and the restroom facilities on the side of the Crosetti building. The 14th DAA will clean and maintain all restrooms.

El Mercado Popular shall pay the 14th DAA a Weekly Minimum Guarantee of \$750.00, plus 15% of Parking.

El Mercado Popular currently charges \$5.00 / car. That is the only general public admissions charge to attend the Market Place events.

Examples:

800 cars @ \$5 each = \$4,000.00 x 15% =	\$600.00
	+ \$750.00

	\$1,350.00

1000 cars @ \$5 each = \$5,000.00 x 15% =	\$750.00
	+ \$750.00

	\$1,500.00
1200 cars @ \$5 each = \$6,000.00 x 15% =	\$900.00
	+ \$750.00

	\$1,650.00

14th DAA shall be responsible to pay for, print and issue to El Mercado Popular all tickets used for parking cars / admissions.

El Mercado Popular shall have the option to declare up to four (4) days per calendar year as Rain Days. On Rain Days El Mercado Popular will only pay 15% of parking charges. The 14th DAA will waive the \$750.00 weekly minimum guarantee.

Fair Heritage Foundation will sell beer and retain 100% of all income.

Conditions from RFP

E. Security Deposit

1. Deposit – Lessee shall deposit with Lessor the sum of \$2,500.00 for 12 months. Increasing to \$5,000.00 or 5% of projected annual rent after 12 months. At a point during the term of the lease when annual rental income to the Fair meets or exceeds \$100,000.00, the security deposit shall increase to \$10,000.00 or 10% of projected rental. Receipt of which is hereby acknowledged by Lessor, as security for the full and faithful performance by Lessee of the terms, conditions and covenants of this Lease Agreement.
2. Deductions for Rent – If at any time during the term of this Lease Agreement Lessee defaults in the payments of rent, or any portion of rent, under this Lease Agreement, Lessor shall (or may) appropriate and apply any portion of the security deposit reasonably necessary to remedy any such default in the payment of rent.
3. Deduction of Repairs – If at any time during the term of this Lease Agreement Lessee, Lessee's subcontractors, independent contractors, vendors, agents or employees damage the premises through want of ordinary care or any greater degree of culpability, then Lessor shall appropriate and apply any portion of the security deposit reasonably necessary to fund the necessary repair.
4. Deduction at Termination of Lease – If, upon termination of this tenancy, Lessee fails to leave the premises in a condition comparable to the condition of the premises at the time Lessor delivered possession to Lessee at the commencement of this lease, ordinary wear and tear excepted, then Lessor shall be entitled to appropriate and apply all or any portion of the security deposit reasonably necessary to put the premises in the condition comparable to the condition of the premises at the time of delivery.
5. Replenishment and Increase of Deposit – If all or any portion of Lessee's security deposit is properly applied by the Lessor during the term of this Farmers Market Lease Agreement for any purpose authorized by this Farmers Market place Lease Agreement, Lessor will provide Lessee with written notification, and this written notification shall include an itemized statement describing the disposition of the security. Upon receipt of written notification, Lessee shall have ten business days to replenish this amount. Lessee's failure to replenish the security deposit within ten days from receipt of written notification shall constitute a material breach of this Farmers Market Lease Agreement.
6. Return of Deposit at Termination of Lease – Lessor shall return to Lessee the portion of the security deposit remaining after any deductions authorized by this Farmers Market Lease Agreement or otherwise authorized by

law, if any, in the following manner. If a deduction has been made only for the nonpayment of rent, the remaining portion, if any, shall be returned not later than two weeks after the date Lessor receives possession of the premises. If a deduction has been made for any other reason authorized by this Farmers Market Lease Agreement or otherwise authorized by law, the remaining portion, if any, shall be returned no later 30 days from the date Lessor receives possession of the premises. Lessee shall not be entitled to any interest on any portion of the security deposit.

F. Rent

1. Payment:

Rent shall be paid by the close of business on Thursday of each week following the weekend market.

2. Force Majeure:

If any party fails to perform its obligations because of strikes, lockouts, labor disputes, embargoes, acts of God, judicial orders, enemy or hostile government action, civil commotion, fire or other casualty or other causes (except financial) beyond the reasonable control of the party obligated to perform, then that party's performance shall be excused, except for Lessee's payment of the Minimum Guaranteed Rent, for a period of such cause for failure to perform. Provided, however, that if Lessee is unable to perform such cause beyond its reasonable control (exception financial) for a period excess of thirty (30) days, then either party may terminate this Farmers Market lease upon thirty (30) days written notice to the other party without further liability.

3. Documentation and Procedures:

The Lessee shall record all sales and shall maintain, for at least three (3) years after the expiration of each lease, full, true and accurate books of account and records, conforming to generally accepted accounting principles, showing all gross sales, including tax reports, bank deposit records and other supporting data (all collectively called "Financial Records"). The Lessee shall furnish the Lessor with a statement, herein called the "Weekly Report", of gross revenue from admissions, sellers' spaces, reservations, etc. during the preceding week. Such statement shall agree with the Financial Records. Lessee shall submit to the District daily gross receipts reports including a listing of all daily attendance figures (paid, discount, complimentary), all revenue listed by source including a breakdown of all individual seller fees for seller space; fees for all seller space acquired by bid; food and beverage sales report; sponsorship and advertising revenue; admission revenue; parking revenue and any other financial information reasonably requested by the District.

The following reporting documentation and procedures should be implemented and produced by the Lessee:

c. Tickets

Tickets distributed to the gate employees

Every time a gate employee receives a new stack of tickets, a new gate report needs to be completed. First, the gate employee should review the sequence and recount the tickets in the stack. Second, the first and the last ticket numbers in the sequence should be written in the gate report. The gate employee should write his/her initials next to these numbers.

Sales of the tickets

Under this contract, only tickets distributed by the District should be sold in the Farmers Market operation.

Lessee should give out tickets to all vendors and parking customers regardless of whether they pay or not. A ticket that was issued for free should be marked for subsequent reconciliation and reporting to the District.

An employee who does not sell tickets should monitor the parking lot and vendors to ensure that all cars and vendors have tickets. At the end of the day, the employee responsible for a stack of tickets should document the number of free, paid and unsold tickets on the gate report. The gate employee should write his/her initials next to these numbers.

Unused tickets

Tickets that were not used by the gate employee should be returned to the Lessee management. These tickets should be kept with the related gate report for the duration of the three years while under contract. The District reserves the right to inspect these tickets at any time.

d. Gate Report

A gate report should be completed and submitted to the District for each day of operation and for each gate.

A gate report should include:

- Lessee name
- The date of the operation
- The name of the gate (ex. Main Entrance)
- The name of the gate employee
- Types and number of tickets sold
- Types and numbers of free tickets
- Copy of the first and the last ticket stub sold
- Cash pick up amount, time and initials of the gate employee and the manager who collected cash
- Signature of the gate employee
- Signature of the Farmers Market manager who reviewed and accepted the gate report.

A gate report should be completed by the gate employee:

- When tickets are received from the manager by gate employee, he/she should document on the gate report the first and last ticket received. These numbers should be initialed by the gate employee.
- When the Lessee management picks up cash during the gate operation, the gate employee should write the amount picked up by the manager and the time of the pick up. Both the gate employee and the manager should initial this entry.
- At the end of the day, the gate employee should complete the gate report. The gate employee should document the number of tickets sold for each revenue type (ex. Vendor, food vendor or parking).
- The gate employee should calculate the total revenue based on the information on the gate report.
- The gate employee should copy the first and the last ticket stubs sold, sign off on the copy and attach the copy of the report.
- The gate employee should reconcile revenue collected to the gate report. Discrepancies should be documented.
- The gate employee should sign the gate report testifying that the information on the gate report is complete and accurate.

The gate report should be reviewed and signed by the Farmers Market manager. His/her signature will represent that he/she agrees with the information on the gate report and has accepted the revenue on the gate report.

e. Weekly Report

A weekly report should be completed by the manager and submitted to the District for each week the Farmers Market is in operation.

Weekly report should include:

- Lessee name
- Dates of the weekend
- Number of tickets sold during the weekend for each revenue type
- Tickets sequenced used during the weekend for each gate and for each revenue type
- Total revenue for the weekend
- Reconciliation between revenue reported on gate reports and total weekly revenue
- Signature of the Farmers Market manager

Weekly report should be prepared by the Lessee management.

Weekly report will be reviewed by the Lessee. The review will include tracing information on the weekly report to the gate report. The Lessee should sign the weekly report representing that he/she agrees with the information on the weekly report and has accepted the revenue reported on the weekly report.

4. Audits:

District has the right to audit the Financial Records at any time at the sole discretion of the District. If the District conducts an audit, Lessee shall make all Financial Records available for inspection or audit within fourteen (14) days following any request by the District that the Financial Records be made available for an audit. The District shall pay the cost of all audits provided, however, that if the audit determines that an amount in excess of \$5,000.00 is due and owing the Lessee to the District, Lessee shall pay all costs associated with the audit within fourteen (14) days after written demand by the District.

Lessee shall maintain all Financial Records for at least three (3) years after the final payment of Rental under this Lease Agreement and extension of this Lease Agreement, or longer as directed by District.

Any information obtained by the District pursuant to any inspection or audit shall be considered public documents, unless otherwise exempt, and subject to disclosure according to Public Records Act.

G. Operation and Management of Farmers Market

Operation, management and maintenance of the Farmers Market will be at the Lessee's sole expense, including, but not limited to:

1. Coordinating reservations and renting spaces for sellers
2. Establishment and collection of admission fees and all other revenue
3. Advertising, marketing and promotion, which shall be in compliance with all applicable statutes, regulations and ordinances, and subject to the prior written approval of the District, which will not be unreasonably withheld

4. Staffing with all necessary personnel including supervisory personnel
5. Providing management, administrative and security personnel and controls at any time the Farmers Market vendors are on the premises.
6. Providing food and beverage service and operate from food service facilities that are clean and sanitary in accordance and consistent with all applicable rules, demands and requirements of law, pertinent health and sanitary codes and requirements of duly authorized health authority of Santa Cruz County and other health department having jurisdiction.
7. Keeping and providing all financial records required by the District.
8. Filing and implementing an annual operating plan for a Farmers Market business which addresses seller space configuration, subject to approval by the District.
9. Maintaining the premises in a good, clean and safe condition. Lessee shall prepare and submit to the District for the District's approval a plan for maintenance of the premises, facility clean up, waste removal, waste recycling and trash.
10. Develop and submit to the District for the District's approval a parking plan for the Farmers Market visitors, seller and employees.
11. Provide appropriate levels of security and crowd control measures for the operation
12. Provide a system for emergency medical response during hours of operation.
13. Compliance with SB198 health and safety requirements
14. Compliance with all federal, state and local statutes, laws, ordinances and regulations relating to environmental issues including but not limited to the Air Quality Board, Regional Water Quality Control Board regulations. Lessee shall at all times conduct its Water Quality Act, and California Environmental Quality Act, the National Environmental Protection Act and all comparable related and successor statutes, laws, ordinances and regulations.
15. Develop and submit to the District for the District's approval a program to maintain a drug-free workplace at the Farmers Market.
16. Effective January 1, 2008, Lessee covenants that it will fully comply with Public Contract Code section 10295.3 with regard to benefits for domestic partners.
17. Compliance with all federal, state and local statutes, laws, ordinances and regulations relating to equal employment, disability access and non-discrimination, including, but no limited to, the Unruh Act, Americans with Disabilities Act, Occupational Safety and Health Act, California Civil Code sections 51-54.6, inclusive and all comparable, related and successor statutes, laws, ordinances and regulations.

Lessee further agrees to use reasonable care in its use and occupancy of the premises and, at all times during the Term, to keep and maintain the premises in good, clean and safe condition and to prevent waste upon, or damage to, the premises. Lessee will maintain all of its equipment, inventories and other tangible property in a well maintained, neat, orderly and careful manner at all times. All storage will be in an area designated by the District. Storage is restricted to those items used in general operation of the Farmers Market. Storage of personal items is prohibited.

Maintenance, including equipment and facilities repairs, must be confined to the premises and may not occur on any other part of the fairgrounds.

H. Limitations on Use

Lessee will not conduct, or permit to be conducted on the premises any business or act, which is or may be contrary to, or in violation of, any federal, state or local statute; law, regulation or ordinance. Lessee shall not engage in or knowingly or negligently permit any condition upon the premises inappropriate to the neighborhood in which the fairgrounds is located, which includes the governmental buildings and residential neighborhoods.

I. **Right to Enter**

The District reserves the right to enter onto the premises at any time for any purpose, including emergencies. Lessee shall permit designated agents of the District to make periodic inspections of the premises to determine whether the Lessee has complied with, and is complying with, the Terms and Conditions of the Lease Agreement. Lessee shall also permit designated agents of the District to enter the premises for the purpose of accomplishing repairs or replacements where the Lessee is obligated to make such repairs or replacements and has failed to do so after reasonable notice period determined by the District. The notice period shall depend upon the nature and extent of repair or replacement required and the impact of the defect on the safety and profitability of the Farmers Market. No such entry by, or on behalf of, the District on the premises shall cause or constitute a termination of the Lease Agreement or be deemed to constitute an interference with the possession of the premises by Lessee.

Lessee shall be responsible for any costs for repairs made to premises or facilities by District staff or any other contracted service. Lessee shall be responsible for rental of any equipment needed to make repairs, including District equipment.

J. **Licenses, Permits and Taxes**

Lessee shall obtain, maintain and pay for all licenses and permits required for its business throughout the entire term of the Lease Agreement and any extensions, including, but not limited to, holdover periods, if any.

Lessee is aware and agrees that the Lease Agreement, or Lessee's use of the Premises, may be subject to federal, state or local charges, taxes or fees. All personal property taxes, income taxes, possessory interest taxes, general and special assessments, and other charges of every description levied on or assessed against the operation of the Farmers Market, shall be paid promptly by Lessee direct to the charging authority before delinquency and before any fine, interest or penalty shall become due or be imposed by operation of law for nonpayment. Lessee shall hold the District harmless and indemnify the District against and from any and all charges, fee, assessments and taxes imposed under this paragraph.

K. **Consent to Improvement or Modification of Premises**

Lessee shall make no improvement or modification of the premises for any reason without the prior written consent of the District. The District may grant or withhold its consent for any improvement or modification of the premises in its sole and exclusive discretion. No improvement or modification made by Lessee during the term of this Lease may be subsequently modified, altered or removed without the prior written consent of the District.

Any improvement, alteration or modification of the premises made by Lessee shall be at the sole cost and expense of the Lessee. All improvements, alterations or modifications made by the Lessee shall be in strict compliance with any and all conditions specified by the District, and with all codes, statutes, ordinances and regulations by any governmental agency having jurisdiction. Lessee shall defend and indemnify the District against all liability and loss of any type, including but not limited to, all expenses, liens, mechanics liens, claims, charges or damages to property or any other person, arising out of work performed on the premises by Lessee, together with reasonable attorneys fees and all costs and expenses which might arise by reason of the making of repairs, improvements or modifications; excepting only the sole negligence or willful misconduct of the District.

L. **Title to Improvements**

At the sole and exclusive discretion and option of the District:

1. All improvements on the premises at the expiration of the term or sooner termination of this lease shall, without compensation to the Lessee, then become the District's property free and clear of all claims to or against them by Lessee or any third person, and lessee shall defend and indemnify the District against all liability and loss arising from such claims or from Lessor's exercise of the rights conferred by this Paragraph (L)(1).

2. At the expiration or sooner termination of the term, the District may, at the District's election, demand the removal from the premises of all fixtures and improvements or of certain fixtures or improvements or both, at Lessee's sole cost and expense. Removal of fixtures and improvements requires that Lessee restore the premises to their original condition, ordinary wear and tear excepted.

M. Food and Beverage Service

Lessee will provide food and beverage service within the operation of the Farmers Market. Food and beverage are to be prepared and served from concession stands that are approved by the Santa Cruz County Health Department.

N. Assignment and Subletting

The rights and privileges granted hereunder shall not be assigned or transferred in any manner whatsoever by the Lessee without the prior written approval of the District. For the purpose of this paragraph, an assignment or transfer includes the sale of all, or a majority of all the legal and/or equitable interest in Lessee. In the event of a sale or transfer of ownership that is approved by the District, the District reserves the right to negotiate all terms and conditions relevant to the Agreement, including termination of the Agreement.

The Lessee shall not sublet any rights or privileges granted hereunder without the prior written approval of the District. In the event of a sublet that is approved by the District, the District shall receive the percentage rent designated in the Lease Agreement of Gross Revenues based upon the gross revenue from the operation of the sublease.

O. Insurance

1. **Worker's Compensation:**

The Lessee shall secure and maintain, at its own expense, during the Term all Workers's Compensation insurance required by California law for all Lessee's employees.

2. **Automobile Insurance:**

Lessee shall secure and maintain at its own expense during the Term Commercial Automobile Liability coverage, on a per accident basis, with limits of not less than \$1,000,000 combined single limit per accident for contracts involving the use of Lessee's vehicles (auto, trucks, or other licensed vehicles) on the Premises or any portion of the fairgrounds.

3. **Commercial General Liability Insurance:**

The Lessee shall secure and maintain at its own expense during the Term a minimum of One Million Dollars (\$1,000,000) combined single-limit commercial general liability insurance covering the Lessee, its employees, agents and subsidiaries, for claims for damages for bodily injury, property damage, personal injury, liquor liability, automobile and maintenance vehicle liability insurance.

Coverage shall include blanket contractual insurance and such coverage shall make express reference to the Lessee's hold-harmless provision in Section P below. The liability insurance shall include coverage for products.

The Lessee agrees that the general liability insurance herein provided for shall be in effect at all times during the Term. In the event said insurance coverage expires at any time or times prior to or during the Term, Lessee agrees to provide the District at least consistent with provisions of this Lease Agreement, prior to any expiration date, a new certificate of insurance evidencing insurance coverage as provided for in this Lease Agreement for a term not less than the remainder of the Term, or for a period of not less than one (1) year. New certificates of insurance and additional insured endorsements are subject to the approval of the District, the State of California and the California Fair Services Authority, and Lessee agrees that no work or services shall be performed, and no Farmers Market shall be conducted, prior to the giving of such approval.

In the event the Lessee fails to keep in effect at all times insurance coverage as herein provided, the District may, in addition to any other remedies it may have, terminate this Lease Agreement.

The following statement regarding additional insured must be included on all insurance certificates: **"That the State of California, the 14th District Agricultural Association doing business as the Santa Cruz County Fair, Santa Cruz County and their respective agents, directors, officers, servants and employees are made additional insured, but only insofar as the operations under this contract are concerned."**

In addition to the foregoing, Contractor shall provide a certified copy of an additional insured endorsement to the District, Forms ISO CG 2005, 2010, 2012, 2024 showing the State of California, the 14th District Agricultural Association, the Santa Cruz County Fair, Santa Cruz County and their agents, directors, officers, servants and employees are made additional insured on Lessee's general liability insurance policy and automobile liability policy.

1. Provisions relating to all insurance required by this Lease Agreement.

The insurance coverage provided by Lessee shall be primary and any separate coverage or protection available to the District or any other additional insured shall be secondary.

Nothing in the insurance requirements shall be construed as limited in any way the extent to which the Lessee may be held responsible for damages resulting from Lessee's operations, acts, omissions, and/or negligence. Insurance coverage obtained in compliance with this contract shall not relieve the Lessee of liability in excess of such minimum coverage, nor shall it preclude the District from taking other actions available to it under contract documents or by law, including, but not limited to, actions pursuant to Lessee's indemnity obligations.

Upon request by the District, the Lessee shall immediately furnish a complete copy of any policy required by the Paragraph, including all endorsements, certified by the insurance company issuing the policy to be a true and correct copy of the original policy.

P. Indemnity

To the fullest extent permitted by law, Lessee shall defend, indemnify, and hold harmless the District and its agents, directors and employees from and against all claims, damages, losses and expenses of every kind, nature and description (including, but not limited to, attorneys fees, expert fees and costs of suit), directly, or indirectly, arising from, or in any way related to the performance or nonperformance of this Lease Agreement, regardless of responsibility of negligence; by reason of death, injury, property damage, or any claim arising from the alleged violation of any state or federal accessibility law, statute or regulation, (including but not limited to, the Americans With Disabilities Act, and/or any state, local, successor or comparable provision of law) however caused or alleged to have been caused, and even though claimed to be due to the negligence of the District. Provided, however, that in no event shall Lessee be obligated to defend or indemnify the District with respect to the sole negligence or willful misconduct of the District, its employees, or agents (excluding the Lessee herein, or any of its employees or agents.)

Q. Notice

Lessee shall, within three (3) business days, report in writing to the District any incident that might reasonably be expected to result in any claim under any of the indemnity or insurance provision of this Agreement. The Lessee also agrees to provide the District with information as to the disposition of any claims within thirty (30) days following said disposition.

R. Surrender of Premises and Holding Over

1. Surrender of Premises during the Annual Fair:
No Farmers Market on Fair weekend.

2. Surrender of Premises:

District shall not be required to give notice to quit possession at the expiration of the Term. Lessee covenants and agrees that on expiration of the Term, or on an earlier termination as hereinafter provided, it will peacefully surrender possession of the Premises in good condition, reasonable wear and tear expected, and District shall have the unconditional right to possession of the Premises.

3. Holding Over:

No holding over permitted.

S. Default and Termination of Agreement

1. Notification of Default:

In the event Lessee shall default in the performance of the terms or conditions of this Lease Agreement, the District may notify the Lessee of such default in writing. Failure on the part of the District to notify Lessee of default in accordance with this

Section shall not be deemed a waiver by the District of District's rights on default of the Lessee or such default at a subsequent time and such notice will have the same effect as if promptly made.

2. Correction of Default:

Within five (5) days of receipt of written notice of default from the District, Lessee shall correct such default if the default is with respect to any payment required to be made by the Lessee or within ten (10) days of receipt of the written notice of default if it is of any other nature. In the event Lessee fails to correct the default to the satisfaction of the District within the time specified, or such greater period as the District may consent to by prior writing, the District shall have all rights accorded by law, or to terminate this Lease Agreement. The Lessee shall pay all costs and attorney's fees incurred by the District in the enforcement of any of the provisions in this Paragraph or in this Lease Agreement.

3. Labor Dispute

In the event the Lessee cannot perform its obligations under this Agreement because of a labor dispute, such nonperformance will not be considered a default, provided, however, that in the event Lessee cannot perform said obligations because of a labor dispute, the District may provide for the continuation of a Farmers Market, similar in operation to the Farmers Market, until the labor dispute is settled. In the event the Lessee cannot perform said obligations for more than sixty (60) business days because of a labor dispute, the District shall have the option to terminate this Lease Agreement upon thirty (30) days notice.

4. Insolvency of Lessee:

In the event a decree or order by a court having jurisdiction shall be issued (a) adjudging the Lessee bankrupt or insolvent; or (b) approving as properly filed a petition seeking reorganization of the Lessee under any section of the national Bankruptcy Act, as amended, or (c) ordering or approving the winding up or liquidation of the Lessee's affairs; or (d) appointing a receiver or a liquidator or a trustee in bankruptcy or insolvency proceedings against it, or shall file a petition or seek reorganization under any state insolvency law, or shall admit in writing its inability to pay its debts generally as they become due, or take any action in furtherance of any of the aforesaid purposes, or shall abandon this Lease Agreement, then District may terminate this Lease Agreement. In the event of such termination, the Lessee shall be liable, without limitation, for all payments required to be made to the District up to and including said date of termination.

5. Acceptance of Rental:

The acceptance of a rental agreement with a third party to operate the Farmers Market shall not constitute a waiver or estoppel of the District's right to exercise its remedies for the breach of any of the terms or conditions of this Lease Agreement.

T. Destruction of Premises/Condemnation

1. Destruction:

If all or any portion of the leased premises, is damaged or destroyed by any cause whatsoever [or by any cause for which Lessee is required under this Lease Agreement to carry insurance], Lessee shall at its own cost and expense promptly repair the damage and restore the leased premises to at least the same condition that existed before that damage or destruction, regardless of whether any insurance proceeds paid for the damage or destruction are sufficient to cover the entire cost of repair or restoration. During repair and restoration this Lease Agreement shall remain in full force and effect and the rent payable under this Lease Agreement shall not be abated in any way or to any extent. The proceeds of any insurance purchased by Lessee covering the damage or destruction shall be made available to Lessee for the repair or restoration required under this section.

2. Condemnation:

If all or any part of Premises is taken by any public or quasi-public agency or entity under the power of eminent domain during the term of this Lease Agreement (1) Either District or Lessee may terminate this Lease Agreement by giving the other ninety days written notice of termination; provided, however, that Lessee cannot terminate this Lease Agreement unless the portion of Premises taken by eminent domain is so extensive as to render the remainder of the Premises useless for the uses permitted by this Lease Agreement and District is unable or unwilling to provide a substantially equivalent amount of space in lieu to the Premises sold or taken. Any and all damages and compensation awarded or paid because of a taking of the Leased Space or the Building shall belong to District, and Lessee shall have to claim against District or the entity exercising eminent domain power for the value of the unexpired term of this Lease Agreement or any other right arising from this Lease Agreement.

U. General Conditions

1. Contract Documents:

The Request for Proposals (RFP) and the entire proposal submitted by the Lessee in response to RFP Number 2012-04 are accepted by the District and incorporated into this Lease Agreement as contract documents. However, any conflict or discrepancy between the contract documents shall be resolved in accordance with the following order of precedence: (1) this Farmers Market Lease Agreement; (2) the RFP; and (3) the Lessee's submitted proposal.

2. Amendment or Modification of Agreement:

No agreement to modify, or modification of, this Agreement shall be binding on the District unless the same is reduced to writing, approved by the Board of Directors of the District, and executed by the District and approved by the appropriate State agencies.

3. Advertising, On-site Signage and Sponsorship:

All advertising shall be subject to the prior approval of District Staff, which approval will not be unreasonably withheld. Lessee shall not advertise in any manner or form on or about the Premises except by means of such signage or forms of mass media advertising approved by the District. Such approval must be in writing prior to display or mass media circulation. Advertising signage as well as operational signs are to be temporary in nature, placed only in the defined Farmers Market premises and must be professionally made.

Lessee shall obtain prior written approval of District Staff prior to entering into any sponsorship agreement. The District will not unreasonably withhold its approval.

4. Storage:

There is no storage facilities located on the grounds of the District. Therefore, any storage required must be obtained and paid for at the sole expense of the operator at a facility located off grounds.

5. Emergency/Disaster Plan:

Lessee shall be required to create an emergency disaster plan for the Farmers Market operation to be submitted for review and approval annually by the District. The emergency disaster plan requires the prior written approval of the District.

Lessee shall provide the District an "emergency key" in order to access all of the Lessee's facilities in case of an emergency or disaster.

The fairground is considered an Emergency Disaster Center and in the event of a declared emergency the district may reduce the size or scope or relocate the Farmers Market.

6. Fencing:

The fencing surrounding the premises is permanent and is the property of the District. If the Lessee requires additional, temporary fencing to be installed, it will be at the sole cost and expense of the Lessee. Nor to installation of any fencing, written plans for fencing must be provided to the District for its written approval. Temporary fencing shall be removed at the conclusion of each Farmers Market weekend and stored. It may not remain in place throughout the week.

7. Parking:

Lessee will manage all Farmers Market parking operations pursuant to a plan to be approved annually by the District, in writing. All parking operations must be maintained in strict compliance with the Americans with Disabilities Act, and/or any state, local, successor or comparable provision of law. Lessee shall have no right to operate parking for any interim events unless requested in writing to do so by the Lessor.

8. Refuse and Waste Removal:

All refuse and waste material created by the Lessee's operations in all areas of the premises and fairgrounds, including surrounding fence lines, parking areas and streets, shall be promptly collected and disposed of after each Farmers Market day. Lessee shall be responsible for employing the necessary personnel, including supervisors, before, during and after hours of each operating day to comply with these provisions; providing sufficient waste receptacles and equipment at each location and making certain they are kept clean and properly serviced during and after each operating day, to the satisfaction of the District.

Wet refuse must be stored in water-tight containers pending removal from the premises. Grease and waste food shall be kept in closed metal containers until removed from the premises.

All equipment utilized by the Lessee for refuse and waste removal shall only be staged in the Farmers Market premises or in designated storage area. Equipment is to be staged only one day prior to the Farmers Market selling day and one day following the Farmers Market selling days.

9. Lot Improvements:

The District shall give the Lessee at least thirty (30) days notice prior to making any improvements to the lot such as patching, striping, sewer repair or installations. The District will make reasonable attempts to implement any construction, repairs or improvements without substantial negative impact to the Farmers Market operation.

10. Other Events:

Lessee acknowledges that the District rents fairgrounds facilities and property outside of the premises for the operation of other public and private events. Lessee agrees to cooperate with District staff and to make necessary adjustments in the operation of the Farmers Market to accommodate periods of increased or large event use on the fairgrounds.

11. Security and Law Enforcement

Lessee will develop and submit to the District for its written approval a security plan for the Farmers Market operation. All expenses for implementation and operation of the security plan shall be the sole responsibility of the Lessee. Any and all law enforcement costs incurred or in connection with the operation of the Farmers Market shall be the sole responsibility of the Lessee.

12. Prohibition of Liens:

Lessee shall not suffer or permit to be placed against the Premises, or any part thereof, any mechanic's, materialmen's, contractor's or subcontractor's liens arising from any claim for damages growing out of the work of construction repair, restoration, replacement or improvement on the premises or any other claim or demand howsoever the same may arise, but Lessee shall pay, cause to be paid or bond against the premises; and Lessee shall indemnify and hold District and said premises free and harmless from all liability for any and all such liens, claims and demands, together with the attorney fees, costs and expenses in connection therewith.

13. ATM Service

The District has the exclusive right to provide ATM services on the premises and the fairgrounds. The District will coordinate with the Lessee to determine the need for and placement of ATM's within the premises, if ATM service is desired. The District shall have exclusive right to any and all revenues for ATM service.

V. Notices

Any and all notice given under this Lease Agreement or otherwise may be served by enclosing the notice in a sealed envelope addressed to the other party and sent by certified or registered mail with postage prepaid; or, by personal delivery. Notice shall be deemed given on the day of personal delivery, or five days after mailing. Notice shall be given as follows:

To the District: 14th District Agricultural Association
Santa Cruz County Fair
2601 East Lake Ave.
Santa Cruz, CA 95076
Attention: Interim Manager

To the Lessee: El Mercado Popular, Inc.
15374 Del Monte Farms Road
Castroville, CA 95012

W. Other Miscellaneous Provisions

1. Successors:

Each and all of the terms and conditions herein contained shall be binding upon and shall inure to the benefit of the successors in the interest of the District and, subject to the provisions as to assignment, any successors in interest of the Lessee.

2. Time is of the Essence:

Time is of the essence in the performance of this Lease Agreement.

3. Independent Contractor:
Lessee is not an employee or agent of the District by reason of this Lease Agreement or otherwise. Lessee is an independent contractor and as between the District and the Lessee, the Lessee shall be solely responsible for its acts or omissions arising from, or relating to this Lease Agreement.
4. Applicable Law and Venue:
This Lease Agreement shall be interpreted and enforced in accordance with the laws of the State of California and shall be deemed to have been made, and shall be performed, in the State of California. In the event of litigation the parties acknowledge and agree that venue shall be in the superior court for the County of Santa Cruz.
5. Entire Agreement:
This Lease Agreement, together with all Exhibits attached hereto, constitutes the entire Agreement between the parties. No promise, representation, warranty or covenant not included in this lease has been or is relied on by either party.
6. Headings:
The headings of this Lease Agreement are inserted only as a matter of convenience and reference and do not define or limit to the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.
7. Acceptance of Standard Contract Terms and Conditions:
Lessee accepts and agrees to the Standard Contract Terms and Conditions set forth in Part IX (c), which are incorporated by this reference.
8. Severability:
If any covenant, term, condition or provision of this Lease Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Lease Agreement shall be valid and enforceable to the fullest extent permitted by law.
9. Successors:
Subject to the provisions of this Lease Agreement regarding assignment and subletting, each and all of the covenants and conditions of this Lease Agreement shall be binding on and shall inure to the benefit of the heirs, successors, executors, administrators, assigns and personal representatives of the respective parties.
10. Attorneys Fees and Costs:
If either party brings any action or proceeding arising out of, or in any way related to this Lease Agreement, or any right or remedy under this Lease Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and costs.
11. Space Fees:
Lessee shall furnish the District with a list of all sales prices for spaces, parking and any other charges of any kind whatsoever to be charged by the Lessee. If prices change at any point during the term of this contract, new pricing must be submitted to Lessee prior to the price change taking affect.