

NORTH CAROLINA

PARKING LOT LEASE

EDGECOMBE COUNTY

THIS PARKING LOT LEASE (this "Lease"), made and entered into this 9th day of May, 2005, by and between the **City of Rocky Mount**, a North Carolina municipal corporation located in Nash and Edgecombe Counties, North Carolina ("Landlord") and the **Historic Peoples Building, LLC**, a North Carolina limited liability company having its principle office in Durham County, North Carolina ("Tenant");

W I T N E S S E T H:

WHEREAS, Landlord is interested and involved in revitalizing and rehabilitating Downtown Rocky Mount; and

WHEREAS, Tenant owns and will be rehabilitating the historic Peoples Bank Building (the "Building") located at the intersection of Main and Tarboro Streets in the City of Rocky Mount; and

WHEREAS, the Building is a signature landmark office building in Downtown Rocky Mount and Tenant is committed to returning it to its former splendor; and

WHEREAS, in furtherance of downtown redevelopment and the rehabilitation of the Building in particular Landlord has agreed to lease forty-five (45) parking spaces to Tenant; and

WHEREAS, Landlord has agreed to charge a nominal fee for the parking spaces during the early years of the lease term to assist Tenant in its rehabilitation of the Building;

NOW, THEREFORE, Landlord does hereby lease to Tenant and Tenant does hereby take as tenant of Landlord, subject to the terms and conditions hereinafter set forth, the following described property located in the City of Rocky Mount, Edgecombe County, North Carolina and more particularly describe as follows:

Forty-five (45) parking spaces located in an asphalt parking lot at 226-234 Tarboro Street (Parcel ID#375979189900) (the "Parking Spaces").

THE TERMS AND CONDITIONS of this Lease are as follows:

1. **Term**. The term of this Lease shall commence on the First day of June, 2005 (the Commencement Date"), and if not terminated as herein provided, shall exist and continue for twenty-five (25) years. At the end twenty-five (25) years, tenant will have the option to renew the lease for five year at the current market. If tenant exercise this option, at the end of thirty (30) years, tenant will have the option to renew to renew the lease for another five years at the current market. If tenant exercises the previous two options, at the end of thirty-five (35) years, tenant will have the option to renew the lease for a final five years at the current market.

2. **Acceptance of Parking Spaces by Tenant.** Tenant has examined the Parking Spaces and found the same to be suitable for Tenant's intended use. BY THE EXECUTION OF THIS LEASE, TENANT SHALL BE DEEMED TO HAVE ACCEPTED THE PARKING SPACES IN THEIR AS-IS CONDITION AND ACKNOWLEDGED THAT LANDLORD HAS MADE NO REPRESENTATIONS OR WARRANTIES (EXPRESS OR IMPLIED, OR OTHERWISE) WITH RESPECT THERETO, INCLUDING, WITHOUT LIMITATION, A WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE, ALL OF WHICH WARRANTIES ARE EXPRESSLY DISCLAIMED.
3. **Quiet Enjoyment.** Landlord warrants that if and so long as Tenant shall not be in default hereunder, tenant shall, subject to the terms and conditions hereof, quietly hold, occupy, and enjoy the Parking Spaces and all rights relating thereto during the term hereof, without hindrance, ejection, or molestation by Landlord or any party claiming by, through, or under Landlord.
4. **Rent.** Tenant shall pay Landlord rent as follows:
 - (a) Years one (1) through seven (7). Tenant shall pay Landlord rent in the amount of one-hundred dollars (\$100) per year, payable in advance in the amount of seven-hundred dollars (\$700) on or before the Commencement Date.
 - (b) Year eight (8) through ten (10). Tenant shall pay Landlord rent in the amount of One-thousand two-hundred dollars (\$1200) per year, payable in monthly installments of one-hundred dollars (\$100) each on or before the first day of each month during years eight (8) through (10).
 - (c) Years eleven (11) through fifteen (15). Tenant shall pay landlord rent in the amount of three-thousand six-hundred dollars (\$3,600) per year, payable in monthly installments of three-hundred dollars (\$300) each on or before the first day of each month during years eleven (11) through fifteen (15).
 - (d) Years sixteen (16) through twenty (20). Tenant shall pay Landlord rent in the amount of four-thousand eight-hundred dollars (\$4,800) per year, payable in monthly installments of four-hundred dollars (\$400) each on or before the first day of each month during years sixteen (16) through (20).
 - (e) Years twenty-one (21) through twenty-five (25). Tenant shall pay landlord rent in amount of six-thousand dollars (\$6,000) per year, payable in monthly installments of five-hundred dollars (\$500) each on or before the first day of each month during years twenty-one (21) through twenty-five (25).
 - (f) Options years twenty-six (26) through thirty (30), thirty-one (31) through thirty six (36) and thirty-six (36) through forty (40). Tenant shall pay landlord the market rent per each of the forty-five (45) parking spaces. This amount, to be determined at the start of the five year term option period, will not be less than

six-thousand dollars(\$6,000) per year, and will be payable in monthly installments on or before the first day of each month during year twenty-six (26) through forty (40).

5. **Rent Payment.** All rental payments shall be made without deduction, set-off, recoupment, or demand to Landlord at 331 South Franklin Street Rocky Mount, NC 27802, or at such other place as shall be designated in writing by Landlord.

6. **Uses of Premises.** Tenant, its employees, tenants, agents, customers, invitees, and licensees, shall have the right to use the Parking Spaces for the parking of motor vehicles, less than twenty (20) feet in length, and not for any other use or purpose. All motor vehicles (including all contents thereof) shall be parked in the spaces at the sole risk of Tenant, its employees, tenants, agents, customers, invitees, and licensees, it begins expressly agreed and understood that Landlord has no duty to insure any of said motor vehicles (including the contents thereof) and that Landlord is not responsible for the protection and the security of such persons and vehicles. Landlord shall have no liability whatsoever for any property damage and/or personal injury which might occur as a result of, or in connection with, the parking and use of said motor vehicle in any of the Parking Spaces, and Tenants hereby agrees to indemnify and hold Landlord harmless from and against any and all costs, claims, expenses, and/or causes of action which Landlord may incur in connection with or arising out of Tenant's misuse of the Parking Spaces pursuant to this lease. Tenant shall not permit any unlawful or immoral use to be made of the Parking Spaces and shall not occupy or use the Parking Spaces in a manner that would constitute a public nuisance.

7. **Indemnity.** Except when caused by the negligence or willful misconduct of Landlord tenant shall indemnify, defend, and hold Landlord and any assignee of Landlord harmless from and against all liabilities, obligations, damages, fines, penalties, claims, demands, cost, charges, judgments, and expenses, including, but not limited to, reasonable attorney's, consultant's, and expert's fees, which may be asserted against, incurred by, or paid by Landlord by reason of or in connection with any of the following:
 - (a) Tenant, its employees, tenants, agents, customers, invitees, and licensees use and occupancy of the parking spaces;
 - (b) The conduct of Tenant's operations or any work or activity or other things allowed or permitted by Tenant to be done in or on the Parking Spaces;
 - (c) Any breach or default in the performance of Tenant's obligations under this Lease;
 - (d) Any other acts or omissions of Tenant, its agents, employees, tenants, assignees, invitees or contractors; and/or
 - (e) Any bodily injury or death of a person or damage to property occurring or about the Parking Spaces.

If any action or proceeding is brought against Landlord by reason of any claims described in this section, tenant, if Landlord gives Tenant notice thereof, shall, at Tenant's expense, resist and defend such action or proceeding.

Upon learning of any event, condition, or circumstance for which Tenant may be obligated to indemnify Landlord hereunder, landlord shall notify Tenant of such event, condition, or circumstance. Tenant shall have the right to undertake reasonable actions to mitigate, defend against, and otherwise seek to avoid or minimize any amount for which it may be obligated to indemnify hereunder, and Landlord shall not initiate, or agree to initiate such activities or otherwise incur costs subject to indemnification hereunder with out first notifying and providing Tenant reasonable opportunity to fulfill its obligations hereunder.

Tenant's obligation under this Section shall survive the expiration or termination of this Lease. The indemnification provided for herein shall include all cost, including reasonable attorney's fees, incurred in pursuing indemnity claims or enforcement of this provision.

8. **Maintenance and Repairs.** Throughout the term, tenant shall, at Tenant's sole cost and expense, keep the Parking Spaces, or so many of them as are available for Tenant use, and any other improvement related thereto, in good order and condition and shall make or cause to be made all necessary repairs, alterations and/or replacement thereto. All such repairs, alterations, and replacements shall be equal or superior in quality to the condition of the Parking Spaces existing on the Commencement Date. Tenant shall, at Tenant's sole cost and expense, keep the Parking Spaces in a clean and orderly condition, free of snow, ice, rubbish, and obstruction. Landlord shall have no responsibility whatsoever in respect of maintenance or repair, it being intended that Tenant shall have full responsibility for the Parking Spaces. Tenant shall hold Landlord harmless with respect to any liability in respect of maintenance or repair under this Section.
9. **Transfer of Spaces.** Landlord, upon one hundred twenty (120) days notice to Tenant, shall have the right to transfer all, or any lesser number of the Parking Spaces, to another location or locations in Downtown Rocky Mount within five-hundred (500) feet of the Building. The parking spaces Tenant is transferred to shall be in as good or better condition than the Parking Spaces leased hereunder and maybe in another parking lot, a parking deck, or other location. Landlord shall not transfer any of the parking Spaces to another location more than once in any 12 month period. All terms and conditions of this Lease shall apply to the parking spaces to which Tenant is transferred and this Lease shall continue in full force and effect with respect to such parking spaces which became "Parking Spaces" under this Lease.
10. **Assignment and Subletting.** Tenant shall have no right to transfer or this Lease or any of the Parking Spaces without the prior written consent of Landlord, which may not be unreasonably withheld or delayed; provided, however, that (a) Tenant may sublet any or all of the Parking Spaces to one or more tenants in the Building, and (b) Tenant may assign this Lease to any other entity that owns fee simple title to the building.

11. **Signage.** Tenant may place signs indicating that the lot is private and that violators will be towed. This signage must be reviewed and accepted by the Landlord prior to posting. Tenant shall not place any other signs or structures of any type in the Parking spaces or the lot in which they are located without the express written consent of Landlord, which shall not be unreasonably withheld or delayed.
12. **Utilities.** Tenant shall be responsible for all utility bills rendered in connection with the Parking Spaces including storm water and existing and future lighting. Landlord, through its Utility Department, will work with Tenant to create two additional lampposts in the Parking Lot prior to the completion of construction of the building.
13. **Insurance.** During the term of this Lease, tenant shall maintain with an insurance company licensed to do business in the State of North Carolina, at Tenant's sole cost and expense, comprehensive general liability insurance against all liability occasioned by, growing out of, or arising in any way out of the use of the Parking Spaces by the tenant, its employees, tenants, agents, customers, invitees, and licensees, such coverage shall be maintained in an amount of not less than one-million dollars (\$1,000,000) in respect to any one (1) accident or occurrence and in an amount of not less than two hundred fifty thousand dollars (\$250,000) for property loss or damage. Landlord shall be named as a party insured on the policy and Tenant shall deliver to Landlord, prior to the Commencement Date of this lease, and on or before each renewal date of the policy, a Certificate or Certificates of Insurance showing said coverage to be in full force and effect. The insurance coverage may be provided under a blanket policy which covers the Parking Spaces and other property owned or leased by Tenant.

The insurance policy shall provide that it cannot be canceled, not renewed, reduced in any amount or coverage unless the insurance company provides Landlord not less than fifteen (15) days prior notice by certified mail, return receipt requested, at the address provided in this Lease. The insurance coverage and limits required under this Lease are designed to meet the minimum requirements of Landlord and are not a recommended program of insurance for Tenant. Tenant alone is responsible for the sufficiency of its insurance program.
14. **Default.**
 - (a) Any one or more of the following events shall constitute an event of default:
 - (i) Tenant's failure to make payment of rent when the same shall be due and payable, and the continuance of such failure without the curing of the same for a period of (10) days after mailing or delivery to Tenant of notice from Landlord specifying such failures;
 - (ii) Tenant's failure to perform any of the other covenants, conditions, or agreements imposed upon it under this Lease, including, without limitations, the maintenance of insurance coverage, and the continuance of such failure without the curing of the same for a period of thirty (30) days

after mailing or delivery to Tenant of notice from Landlord specifying the nature of such failure; and

- (iii) Tenant's abandonment of the Parking Spaces.

Upon the occurrence of any one or more of the above events of default, or at any time thereafter, Landlord may, at its option, give Tenant notice of Landlord's election to terminate this Lease upon a date specified in such notice, which date shall be not less than thirty (30) days after the date of the giving of such notice by Landlord. On the date specified in said notice, the term and estate hereby vested in Tenant shall cease and any and all other right, title, and interest of Tenant hereunder shall likewise cease without further notice or lapse of time as fully and with like effect as if the entire term of this Lease had expired; provided, however, that the Tenant shall continue to be liable to Landlord as hereinafter provided.

- (b) Upon any termination of this Lease pursuant to paragraph (a) of this Section, or at any time thereafter, Landlord may exercise and pursue and all rights and remedies Landlord shall have at law or in equity. In addition, and without prejudice to any other rights and remedies Landlord shall have at law or in equity, Landlord may re-enter the Parking Spaces and dispossess any and all occupants of thereof in the manner prescribed by law, and Tenant in such case shall remain liable to Landlord as hereinafter provided.
- (c) In the case of any such default, re-entry, termination, expiration, and/or dispossession, Landlord shall retain all rental paid up to the time of such re-entry, termination, expiration, and/or dispossession.

15. **Landlord's Use of Parking Spaces.** Tenant acknowledges that Landlord is motivated to lease the Parking Spaces to Tenant to further the rehabilitation of the building and that during the early years of the term Tenant will pay only a nominal rent.

Beginning in year six (6) and continuing throughout the term of this Lease if the Building is not substantially leased the parties shall negotiate in good faith so that the Parking Spaces are utilized in a manner that encourages additional development in Downtown Rocky Mount. If Landlord and Tenant are unable to agree on the utilization of the Parking Spaces, then the parties shall select a mutually acceptable independent third party to make such determination. If the parties are unable to agree on an independent third party to determine such utilization, then either party may apply to the Senior Resident Superior Court Judge for Edgecombe County for the appointment of a certified mediator. The certified mediator shall determine the appropriate utilization of the parking spaces consistent with the intent expressed in this Lease, and his or her decision shall be final and binding on Landlord and Tenant.

16. **Condition Precedent.** The execution of this Lease by Landlord is subject to compliance with the provisions of N. C. Gen. Stat. § 160A-272

17. **Recordation.** Landlord and Tenant agree not to record this Lease. At Tenant's request and sole cost and expense, the parties shall prepare, execute and record a memorandum hereof which shall include a summary of such terms of this Lease as the Landlord and Tenant deem appropriate. This Lease is subject to the North Carolina Public Records Law (Chapter 132 of the North Carolina General Statutes.)
18. **Condition of Parking Spaces at End of Term.** At the end of the term, by lapse of time or otherwise, Tenant shall deliver the Parking Spaces to Landlord in the same condition as on the Commencement Date, normal wear and tear excepted.
19. **Notices.** Any and all notices or other communications required or desired to be given hereunder by any party shall be in writing and shall be validly given or made to the other party only (a) if served personally, (b) if deposited in the United States first class mail, certified or registered, postage prepaid, or (c) if sent by overnight delivery service and a confirmation of receipt is obtained. If such notice or other communication is served personally, service shall be conclusively deemed made at the time of such personal service. If such notice or other communication is given by mail, notice shall be conclusively deemed given seventy-two (72) hours after the deposit therefore in the United States mail addressed to the party to whom such notice or other communication is to be given at the address set forth below. If such notice or other communication is sent by overnight delivery service, such shall be conclusively deemed given at the time confirmation of receipt is obtained, provided the overnight delivery is addressed to the party to whom such notice or other communication is given at the address set forth below.

If to the Tenant: **Historic Peoples building, LLC**
Attention: Commercial Real Estate Manager
301 West Main Street
Durham, North Carolina 27701
Post Office Box 3619
Durham, North Carolina 27702

If to the Landlord: **City of Rocky Mount**
Attention: City Manager
331 South Franklin Street
Post Office Box 1180
Rocky Mount, North Carolina 27802

20. **Miscellaneous.** This Lease constitutes the entire agreement between the parties hereto related to the subject matter hereof and it is understood and agreed that all undertakings, negotiations, recommendations, promises, inducements, and agreements heretofore entered into between the parties are merged herein. The headings and captions used herein are for convenience only and do not limit or alter the terms of this Lease or in any

way affect the meaning or interpretation of this Lease. This Lease may not be changed orally, but only by a written document signed by all parties. No waiver of any provision of this Lease shall be deemed valid unless in writing and signed by the party against whom it is sought to be enforced. Failure to exercise any right, power, or remedy shall not constitute a waiver of any obligation under this Lease or constitute a modification of this Lease. This Lease may not be assigned without the written consent of Landlord, which maybe withheld in its discretion, but if assigned with Landlord's approval the provisions hereof shall insure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. The invalidity or unenforceability of any terms or provisions of this Lease shall not affect the validity or enforceability of any other provision of this Lease, which shall remain in full force and effect, and, if any such unenforceable provision hereof is enforceable in any part or to any lesser extend, such provision shall be enforceable in all such parts and to the greatest extend permissible under applicable law. The provisions of this Lease shall be governed by and construed and enforced in accordance with the laws of the State of North Carolina. This Lease may be executed in any number of counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, Landlord and Tenant have hereunto affixed their hands and seals, this the day and year first above written.

ATTEST:

HISTORIC PEOPLES BUILDING, LLC

By: **Self-Help Ventures Fund**, its managing member

By: _____
_____, _____

ATTEST:

CITY OF ROCKY MOUNT

Jean M. Bailey, City Clerk

By _____
Frederick E. Turnage, Mayor

CORPORATE SEAL

NORTH CAROLINA
_____ COUNTY

I, _____, a Notary Public of the County and State aforesaid, do hereby certify that _____ personally came before me this day and acknowledged that he/she is the _____ President of **Self-Help Ventures Fund**, a North Carolina nonprofit corporation, which is the managing member of **Historic Peoples Buildings, LLC**, and that by authority duly given, the foregoing instrument was signed in its name.

Witness my hand and official stamp or seal, this the _____ day of _____, 2005.

My Commission Expires

Notary Public

NORTH CAROLINA
_____ COUNTY

I, _____, a Notary Public of the County and State aforesaid, do hereby certify that Jean M. Bailey personally appeared before me this day and acknowledged that she is the Clerk of the **City of Rocky Mount** and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Mayor, sealed with its corporate seal, and attested by herself as its City Clerk.

Witness my hand and official stamp or seal, this the _____ day of _____, 2005

My Commission Expires

Notary Public