TO: VGMC Budget Committee

FROM: Merry Chris Smith, Operations Manager

DATE: September 14, 2022

RE: Budget Committee Meeting, September 28, 2022

Attached please find the agenda package for the Budget Committee meeting scheduled for Wednesday, September 28, 2022 beginning at 5:30 p.m. in the County Council Chambers Conference Room in DeLand.

If you have any questions or are unable to attend, please let me know at your earliest possible convenience.

Thank you.

Merry Chris

Budget Committee Members
Christy Gillis, Committee Chair
Keegan Greene
Doug Gutierrez
Paul Manning
Teresa Pope
John Samuelson
Volusia Growth Management Commission
Budget Meeting Notice and Agenda

5:30 p.m. September 28, 2022

Thomas C. Kelly Administration Center
Frank T. Bruno, Jr. County Council Chambers Conference Room
123 W. Indiana Avenue
DeLand, FL

I. Roll Call

II. Approval of Minutes – February 23, 2022 Budget Committee Meeting

III. Review 2021-22 Fiscal YTD Expenditures

IV. Update on 2022-23 Budget

V. Other Business

- Renewal of 2022-23 VGMC Office Lease

VI. Adjournment

If a person decides to appeal any decision by the VGMC of any matter considered at such public meeting, (s)he will need to ensure that a verbatim record of such meeting is made, which record includes the testimony and evidence upon which the appeal is based.

In accordance with The Americans with Disabilities Act (ADA), if a person with a disability as defined by the ADA needs special accommodation to participate in this proceeding, (s)he should contact the VGMC office at least 48 hours prior to the proceeding at 140 S. Beach, Daytona Beach, FL, (386) 947-1875.
The meeting was called to order at 6:50 p.m. by Budget Committee Chair Christy Gillis. Roll was called and the following committee members were present: Christy Gillis, Doug Gutierrez, Paul Manning and VGMC Chairman Sid Vihlen, Jr. Also present were Merry Smith, VGMC Operations Manager and VGMC members Loretta Arthur, Debbie Connors, Jon Greene, Dwight Lewis and Jack Surrette.

**Approval of Minutes**

January 26, 2022 Budget Committee Meeting

Doug Gutierrez made a motion to approve the minutes of the January 26, 2022 Budget Committee meeting as presented. Motion was seconded by Paul Manning and carried unanimously.

**Consider Recommendation for the Proposed 2022-23 Budget**

Ms. Smith stated the proposed 2022-23 budget figures did not change from what the committee reviewed at the January 26, 2022 meeting. She explained that in the Key Objectives portion of the package she updated the number of applications reviewed fiscal year to date as of the date the agenda package was prepared on February 7, 2022. Ms. Smith stated when the proposed budget is approved, she will update the number of applications reviewed to include additional applications received as of the date the budget package is transmitted to the County Budget office.

There was no further discussion. Doug Gutierrez made a motion to recommend the commission approve the proposed budget as presented. Motion was seconded by Paul Manning and carried unanimously.

**Review 2021-22 Fiscal YTD Expenditures**

Chair Gillis stated year to date expenses are in line with the approved budget, and there were no questions or comments from the committee members.

**Adjournment**

There being no further business, the meeting was adjourned at 6:55 p.m.

____________________________
Budget Committee Chair
TO: Members of the VGMC Budget & POP Committees
FROM: Merry Chris Smith, Operations Manager
DATE: September 14, 2022
RE: 2022-23 VGMC Office Lease Renewal

Attached please find the annual lease renewal for the VGMC office located at 140 S. Beach Street, #305, Daytona Beach which is scheduled to begin October 1, 2022.

The new annual rent totals $8,667 ($722.25/month) which represents a 7% increase over the current rent. Utilities are included in the rent, and all other provisions of the lease are generally consistent with the current lease.

Our total rent budget for 2022-23 is $9,000 which is sufficient to cover the office lease, however, we also have off-site file storage rent that runs approximately $480/year. Collectively, this will result in a small overage (should be less than $200) in the rent budget in 2022-23, however, there should be more than sufficient funds in the overall operating budget to absorb the overage.

I met with the General Manager of the building in an attempt to minimize the increase so that we would remain within budget. He remains firm on the 7% increase due to inflation, adding that most other tenants in the building are subject to a 9-9.5% increase. He also pointed out that there have been a number of years in which the VGMC did not receive any increase in rent, which is correct.

We are providing this information for discussion by both the POP and Budget Committees at their respective meetings, and are hopeful the committees will bring a recommendation to the full commission to authorize the VGMC Chair to execute the lease for the 2022-23 fiscal year.

If you have any questions in advance of the meetings, please do not hesitate to contact me.

Thank you,

Merry Chris
KRESS LEASE ABSTRACT

DATE: August 30, 2022

OWNER/LESSOR: Mac II of Volusia
140 S. Beach St. Suite 310
Daytona Beach, FL  32114

leasing@kressdaytona.com
386-290-0411
Tax ID:  26-1611808

TENANT/LESSEE: Volusia Growth Management Commission
vgmc@volusia.org
386-947-1875

PREMISES: 140 S. Beach St. Suite 305
Daytona Beach, FL  32114

AREA: Approximately 360 Square Feet

PERMITTED USE: Professional Office

LEASE TERM: October 1, 2022 through September 30, 2023

MINIMUM RENT — MONTHLY $722.25

INTERNET: $50/month

TOTAL MONTH: $772.25

SECURITY DEPOSIT: None Required

OCCUPANCY: Occupancy may continue uninterrupted
This Lease, dated August 30, 2022, between Mac II of Volusia, LLC, (hereinafter the “Lessor”) and Volusia Growth Management Commission (hereinafter the “Lessee”).

1. DESCRIPTION OF PREMISES

(a) In consideration of the mutual covenants and agreements set forth herein, Lessor leases to Lessee and Lessee leases from Lessor for the rental and on the terms and conditions hereinafter set forth the office space deemed herein by the parties to consist of Suite 305 which is approximately 360+/- rentable square feet (hereinafter the “Premises”) in that real property situated in the City of Daytona Beach, County of Volusia, State of Florida with the address 140 South Beach Street, Daytona Beach, Florida 32114 (hereinafter the “Building”), to be used as professional offices.

(b) Lessor shall allow Lessee reasonable access to the building electric lines, feeders, wiring, telephone rooms, electrical closets and other conduits, pipes and facilities to accommodate Lessee’s telecommunications/internet systems. Lessee’s right to the use of and access to the Lessor’ facilities shall be without charge but for the rent provided for herein.

(c) Lessee acknowledges that the Building contains areas intended for the use in common by all occupants of the Building. As long as Lessee occupies the Premises, Lessee and its employees, agents and invitees shall have the right to use, in common with Lessor, its successors, assigns and other Lessees, all of the common areas.

2. TERM

The Term of this Lease shall be Twelve (12) months, commencing on October 1, 2022 and terminating September 30, 2023 both dates inclusive unless sooner terminated as herein provided.

3. RENT

Tenant covenants and agrees to pay rent plus applicable Florida sales tax in advance on the first (1st) day of each calendar month during the Term and without notice, demand, abatement, deduction, counterclaim, set-off, defense or otherwise, in lawful money of the United States, to Lessor at Lessor’s address as set forth herein this Lease, throughout the Term of this Lease, as follows:

(a) For the twelve month Term of the Lease as set forth in Paragraph 2 hereof, Lessee agrees to pay Lessor Base Rent for the leased premises the sum of Eight Thousand Six Hundred Sixty-Seven Dollars ($8,667.00) payable in quarterly installments as follows: Two Thousand One Hundred Sixty-Six and 75/100
($2,166.75.) Additionally, Rent shall be prorated for any fraction of a month, when applicable, based on the number of days within the fractional month.

(b) Lessor may utilize internet service offered via Lessor’s system for Fifty Dollars ($50.00) per month, payable as additional rent. This service shall provide one wired access point. Wifi or additional outlets are at Lessee’s expense.

(c) It is Lessee’s obligation to pay rent on the first day of each quarter at the following address or such other address as may be designated by Lessor:

Mac II of Volusia, LLC
140 S. Beach St. Suite 310
Daytona Beach, FL 32114

4. SECURITY DEPOSIT

No Security Deposit is required.

5. USE

Lessee shall not occupy, use, or permit any portion of the Premises to be occupied or used, for any business or purpose other than the use as set out in Section 1. Lessee shall not create any nuisance, commit waste or interfere with, annoy or disturb any other Lessees or occupants in the Kress Building.

6. UTILITIES AND CLEANING

The Lessor agrees to furnish the Leased Premises, at its expense, as follows:

(a) Electricity commensurate with the present electrical system and wiring supplying electricity for lights and other usual and ordinary office purposes but not including heavy power consuming machinery or equipment nor computer equipment beyond what may be considered ordinary and reasonable for office use. Electrical demands requiring the installation of additional outlets or circuits will be accomplished at the expense of the Lessee.

(b) Tenants will insure reasonable heating and air conditioning settings are maintained while the suite is occupied. Thermostat setting should be no lower than 70 for cooling and no higher than 75 for heating. After business hours and on the weekends, tenants are responsible for setting thermostats no lower than 78 degrees for cooling and no higher than 65 degrees for heat.

(c) Water supplied for any existing facilities.

(d) Lights in need of replacement.
(e) Reasonable janitorial service for the common areas and restrooms to include the normal and usual cleaning services except on Saturdays, Sundays and holidays.

If the Lessee shall require electrical current or install electrical equipment including, but not limited to, equipment using current which will in any way increase the amount of electricity usually furnished for use in general office space, Lessee will obtain written approval of the Lessor and pay monthly for the additional direct expense involved including any installation cost thereof. Lessor shall not be liable or responsible in any way whatsoever for the quality, quantity, impairment, interruption, stoppage or interference with service involving water, heat, gas, air conditioning, electric current for light and power, telephone or any other utility services. Lessor, however, shall make every diligent effort to cure such impairment, interruption, stoppage or interference with any utility service after due notice from Lessee of such need.

7. LICENSES, TAXES AND FEES

Lessee agrees at its sole cost to pay for all sales, use or other tax applied on rental payments and security deposit which may now be in effect or which may be levied in the future and to pay all licenses and fees incident to the conduct of its business in the Leased Premises and to protect Lessor from any charges incidental thereto. Should any such charges not be paid by Lessee, Lessor has the right to make appropriate payments, and any such charges as are paid by Lessor shall be due from Lessee with the next ensuing monthly payment under this Lease.

8. PARKING

The Lessee, its employees, agents, customers and invitees shall have a non-exclusive right in common with Lessor, its employees, agents, customers and invitees and the Lessees employees, agents, customers and invitees of all other occupants of the building containing the Leased Premises to reasonable use of non-designated parking spaces located in the public area area behind said building for parking.

9. INSURANCE

(a) Lessee agrees to carry at its own expense an Owner/Lessor and Lessees Liability Insurance Policy from a company satisfactory to Lessor with a combined single limit for bodily injury and property damage of $500,000 per occurrence / $1,000,000 aggregate and damage to rented premises of not less than $100,000. Such insurance shall be for the joint benefit of Lessor, and **Lessee shall name Lessor as additional insured** and shall provide that Lessor shall be given at least ten (10) days advance written notice in the event of cancellation. **A copy of said policy shall be delivered to Lessor within ten (10) days of occupancy of the Leased Premises.**
(b) Irrespective of the adequacy of said insurance, Lessee shall indemnify and save Lessor free and harmless from any and all claims, actions, damages, expenses (including without limitation reasonable attorneys’ fees) and liability whatsoever arising out of or in any way connected with injury (including death) or property damage to any person, firm, corporation, or other entity, including Lessor, arising directly or indirectly from the use of occupancy of said Leased Premises or any part thereof by Lessee, its agents, sub Lessees, assigns, contractors, employees or invitees.

(c) Lessee agrees that it will not cause or permit any use or vacation of the Leased Premises which will cause the insurance costs of any other party, including Lessor or other Lessees adjacent to the Leased Premises, to increase, or their insurance to be invalidated. Unless consented to in writing by Lessor, Lessee shall not suffer anything to be or remain upon or about the Leased Premises, nor carry on nor permit upon the Leased Premises any trade or occupation, not suffer to be done anything which may result in an increased or extra premium payable for the insurance of the Leased Premises against fire, or other perils included under standard extended coverage insurance. If the Lessor has granted consent, then the Lessee shall pay any such increased or extra premium within ten (10) days after the Lessee shall have been advised of the amount thereof. Should any such extra premium or increase in premium not be paid by Lessee, Lessor has the right to make appropriate payments, and any such charges as are paid by Lessor shall be due from Lessee with its next ensuing monthly payment under this Lease.

(d) The Lessee agrees to deliver to the Lessor on the inception date or renewal date of each such policy as described above the usual certificates issued by the insurance carrier certifying that such insurance is in force. Nevertheless, the obligation of the Lessee to the Lessor shall not be limited to the amount of such insurance. The said insurance may be included in what is generally known as a blanket policy and shall not be canceled without ten (10) days prior written notice to Lessor.

10. ALTERATIONS

(a) Lessee shall not make or allow to be made any alterations, additions or improvements (collectively “Alterations”) in or to the Premises, including interior and exterior painting, without first obtaining Lessor’s written consent, which consent shall not be unreasonably withheld. Before making any such Alterations, Lessee shall be required to provide Lessor with prior written notice describing and depicting the details of such Alterations.

(b) Lessee agrees that all Alterations shall be done at Lessee’s sole cost and expense and in a good and workmanlike manner, that the structural integrity of the Building shall not be impaired and that no liens shall attach to all or any part
of the premises or the Building by reason thereof as provided in Section 10(d) hereof. Lessee shall obtain, at its sole expense, all permits required for such work.

(c) Unless otherwise elected by Lessor as hereinafter provided, all Alterations made by Lessee shall become the property of Lessor and shall be surrendered to Lessor on or before the Lease expiration date, except as otherwise set forth in this Lease. Notwithstanding the foregoing, movable equipment, trade fixtures, personal property, furniture or any other items that can be removed without material harm to the Premises will remain Lessee’s property (collectively, “Lessee's Owned Property”) and shall not become the property of Lessor but shall be removed by Lessee, at its sole cost and expense, not later than the Lease expiration date. When granting consent for any Alterations, Lessor shall indicate whether it will require the removal of those Alterations prior to the Lease expiration date. Lessee shall repair at its sole cost and expense all damage caused to the Premises or the Building by the removal of any Alterations that Lessee is required to remove or Tenant Owned Property. Lessor may remove any Lessee Owned Property or Alterations that Lessee is required but fails to remove at the Lease expiration date and Lessee shall pay to Lessor the reasonable cost of removal. Lessee’s obligations under this Section 10 shall survive the expiration or earlier termination of this Lease.

(d) NOTICE IS HEREBY GIVEN THAT LESSOR IS NOT AND SHALL NOT BE LIABLE FOR ANY LABOR, SERVICES OR MATERIALS FURNISHED OR TO BE FURNISHED TO LESSEE OR TO ANYONE HOLDING THE PREMISES OR ANY PART THEREOF AND THAT NO CONSTRUCTION OR OTHER LIENS FOR ANY SUCH LABOR, SERVICES OR MATERIALS SHALL ATTACH TO OR AFFECT THE INTEREST OF LESSOR IN AND TO THE PREMISES OR THE BUILDING. Nothing in this Lease shall be construed as constituting the consent of Lessor to or for the performance by any contractor, subcontractor, laborer, material man or vendor of any labor or services or for the furnishing of any materials for any construction, alteration, addition, repair or demolition of or to the Premises or any part thereof. Lessee shall pay or use to be paid all costs of labor, services and materials supplied in the prosecution of any work done in the Premises by Lessee, and Lessee shall keep the Premises free and clear of all mechanics’ liens and other liens arising out of any work done by Lessee or persons claiming under Lessee. All contractors, subcontractors, laborers, material men, vendors and any other party now or hereafter furnishing any labor, services or materials to Lessee with respect to any portion of the Premises are hereby charged with notice that they must look exclusively to Lessee to obtain payment for same. Neither Lessee nor any subtenant shall have any power to do any act or make any contract which may create a lien upon the interest of Lessor in and to the Premises. Lessee shall deliver written notice of the provisions of this Section 10(d) to all contractors performing work in the Premises. In addition, if requested by Lessor, Lessee shall execute a memorandum of this Lease, in recordable form, confirming that the terms of this Lease expressly provide that the interest of
Lessor in the Premises and the Building shall not be subject to liens for improvements made by Lessee and confirming any other information as may be required by Chapter 713, Florida Statutes, to prevent the interest of Lessor in the Premises and/or the Building from being subject to liens for improvements made by the Lessee. The memorandum of Lease shall be in a form acceptable to Lessor and shall be executed and delivered by Lessee to Lessor within ten (10) days after Lessor’s request therefor.

11. LIEN OF THE LEASEHOLD

A first lien is expressly reserved by the Lessor and granted by the Lessee upon all personal property located in or upon the Leased Premises and all improvements, light fixtures, store fixtures, water fixtures and all other fixtures erected or put in place or that may be erected or put in place upon the Leased Premises by or through the Lessee or other occupants, said lien being imposed for the payment of rent and also for the satisfaction of any causes of action which may accrue to the Lessor by provisions of this Lease, all in accordance with Chapter 83 of the Florida Statutes.

12. WIRING INFRASTRUCTURE

(a) Lessee acknowledges that electrical panels, including telephone and internet connections, (the “Panels”) which provide junctions to one or more offices on the Leased Premises may continue to provide services to other offices on the Leased Premises. Said Panels shall be considered part of the infrastructure of the building on the Leased Premises and shall remain in place. Any telephone, internet or other electrical wiring or lines entering into or exiting from the Panels shall not be altered in any way by Lessee.

(b) Should Lessee, its agents, contractors, guests or invitees, directly or indirectly cause any disruption or interruption in the utilities, telephone, internet or electrical services of any other Lessee or occupant of the offices on or adjacent to the Leased Premises, Lessee shall bear the cost of restoring said services, along with any damages caused thereby. Any disruption in said services shall immediately be reported to the property manager who will diligently work to restore said service.

(c) If access to the Panel requires Lessee, any other Lessee, its contractors or agents to enter into an office not occupied under this Lease by said party, they shall first obtain consent from the property manager, who shall provide access to the Panel, and who shall accompany said party during said event. If the Panel is located in Lessee’s office area, Lessee shall permit the property manager or persons authorized by him to access the Panel to perform work, with said access not limited by time.
13. NUISANCES, SIGNS, POSTERS, WALL DECOR AND CLEAN AIR

a. Lessee shall not commit or suffer to be committed upon the Leased Premises any nuisance or other act or thing which may disturb the quiet enjoyment of any other Lessee of the building of which the leased Premises are a part. By the way of illustration and not as a limitation, Lessee covenants and agrees that no loudspeakers, televisions, phonographs, radios or other devices shall be used in a manner so as to be heard or seen outside of Lessee’s Premises. Moreover, Lessee covenants and agrees that it will not conduct any activity on said premises that will constitute a public nuisance or whereby unreasonable and objectionable noises will be created or odors emitted. The smoking of tobacco products, vaping, electronic cigarettes, candles, incense, cooking and the use of hot plates are specifically prohibited.

b. Lessee shall not place or maintain or permit to be placed or maintained and shall promptly remove any signs or advertising of any kind whatsoever on the exterior of the building in which the Leased Premises are located, or on any exterior windows in said building or elsewhere within the Leased Premises or on other public areas of the building in which the Leased Premises are located except such numerals and lettering on doorways as may be approved and permitted by Lessor. Lessor shall have the right to specify the size, design, content and materials to be used and location upon or adjacent to the door of any such numerals and lettering.

c. Nothing shall be affixed to Lessee’s entry door or window without prior Lessor approval. All signs are to be designed and applied by a business sign professional. Temporary “hand-made” signs may be removed by Lessor if displayed more than thirty (30) days beyond Lessee’s first date of occupancy. Upon termination of this agreement, Lessee agrees to remove from the windows of its premises all signs that had been put in place.

d. In order to promote uniformity and an aesthetically attractive appearance within the building, no posters, adhesive decals, pictures and/or signs of any type, other than a basic and conservative sign identifying Lessee’s business, as approved by the Lessor, are to be displayed in or on windows.

e. Neon signs, lighted signs, mechanical or electric signs of any type are not permitted.

f. Pictures posters or other wall hangings displayed on the walls of Lessee’s premises are to be affixed with 3M command strips or picture hooks nailed to the walls. Tape or other adhesives are not permitted.

g. No fasteners of any type may be applied to wood doors or wood door frames.
14. PETS

Except for certified service or guide dogs for persons with disabilities, no pets are allowed (even temporarily) in the Kress Building. Repeat violations by Lessee may result in termination of this Lease Agreement or other remedies legally permitted under this Lease.

15. CASUALTY

(a) If the premises or any of the common areas are destroyed or damaged by fire or other casualty so that Lessee is unable to occupy the Premises for its Permitted Use and, in Lessor’s judgment, repairs cannot be completed within forty-five (45) days after the date of the damage or destruction, Lessor may terminate this Lease effective as of the date of the damage or destruction by giving Lessee written notice within ten (10) days of the date of the damage or destruction.

(b) If Lessor does not terminate this Lease as provided in the paragraph above, Lessor shall promptly rebuild, repair and restore the Premises and the building to their former condition provided, however, that if Lessor has not completed such restoration within forty-five (45) days after the date of the damage or destruction, Lessee may, at its option, terminate this Lease upon written notice to Lessor.

(c) If the Premises shall be damaged in whole or in part during the last three (3) months of the Term so that Lessee is unable to occupy the Premises for its permitted use, then either Lessor or Lessee may, at its option, terminate this Lease upon written notice to the other within ten (10) days of the date of the damage or destruction.

(d) If the damage or destruction renders all or part of the Premises untenable, Rent shall proportionately abate commencing on the date of the damage or destruction and ending on the date the Premises is delivered to Lessee with Lessor’s restoration obligation substantially complete. The extent of the abatement shall be based upon the portion of the Premises rendered untenable, inaccessible or unfit for the Permitted Use.

(e) Notwithstanding anything to the contrary in this Lease, Lessor and Lessee mutually waive their respective rights of recovery against each other and each other’s officers, directors, constituent partners, agents and employees to the extent any loss is or would be covered by fire, extended coverage or other property insurance policies required to be carried under this Lease or otherwise carried by the waiving party, and the right of the insurance carriers of such policy or policies are to be surrogated to the right of the insured under the applicable policy. Each party shall cause its insurance policy to be endorsed to evidence compliance with such waiver.
16. HOLDOVER

(a) In the event of the inability of Lessor to deliver possession of the Leased Premises at the time of the commencement of the Term of this Lease by reason of either holding over or retention of possession of the Lessee or occupant, or for any reason, neither the Lessor nor its agents shall be liable for any damage caused thereby, nor shall this Lease become void or the Term herein specified be in any way extended, but in such event the Lessee shall not be liable for any rent until the possession of the Premises is given to the Lessee. If the Lessee is not given possession of the premises within sixty (60) days after the date herein above specified as the commencement date of the term of this Lease, the Lessee shall have the right to rescind this Lease by giving written notice of such rescission to the Lessor. In such event, this Lease shall be deemed rescinded and void.

(b) If Lessee should hold over after the Lease expiration date, Lessee shall pay two hundred percent (200%) of the rent, including payments of taxes and all items of additional rent, payable during the final full month of the Term, exclusive of abatements, if any. Lessee’s occupancy shall otherwise be on the terms and conditions herein specified so far, as applicable, but expressly excluding all renewal and extension rights. No holding over by Lessee after the Term shall operate to extend the Term. Any holding over with Lessor’s written consent shall be construed as tenancy at sufferance or from month to month at Lessor’s option. Any holding over without Lessor’s written consent shall entitle Lessor to reenter the Premises as provided in Section 18 and to enforce all other rights and remedies provided by law or this Lease.

17. COSTS OF COLLECTION

Lessee promises to pay all costs of collection and its reasonable attorneys’ fees in the event it becomes necessary for Lessor to employ an attorney to collect rent due hereunder by suit or otherwise or to enforce any of the covenants, obligations and conditions imposed by this Lease. The obligation of Lessee to pay such costs of collection including reasonable attorneys’ fees shall apply whether or not suit be brought, and if suit be brought, then upon trial and appellate levels.

18. RIGHT OF ENTRY

Provided that the exercise of such rights does not unreasonably interfere with Lessee’s use or occupancy of the Premises, Lessor shall have the right to enter the Premises at reasonable times during normal business hours and upon reasonable advance notice to Lessee (except in the case of an emergency) for the purpose of making alterations, repairs or improvements to the Premises, to show the Premises to prospective Lessees and for other reasonably related and lawful purposes.
19. DEFAULT

Each of the following events shall be an “Event of Default” hereunder:

(a) Lessee’s failure to pay when due any installment of Rent.

(b) Lessee’s failure to perform or observe any other covenant, condition or other obligation of Lessee and such failure continues for a period of ten (10) days after Lessor gives Lessee written notice thereof.

(c) The Premises become vacant and abandoned other than in connection with a casualty or condemnation.

(d) At Lessor’s option, the occurrence of any of the following:

   (i) The appointment of a receiver to take possession of all or substantially all of the assets of Lessee or the Premises;

   (ii) An assignment by Lessee for the benefit of creditors;

   (iii) The filing of any voluntary petition in bankruptcy by Lessee or the filing of any involuntary petition by Lessee’s creditors;

   (iv) The attachment, execution or other judicial seizure of all or substantially all of Lessee’s assets or the Premises;

   (v) The admission of Lessee, in writing, of its inability to pay its debts as they become due;

   (vi) The filing by Lessee of any answer admitting or failing timely to contest a material allegation of a petition filing against Lessee in any proceeding seeking reorganization, arrangement, composition, readjustment, liquidation or dissolution of Lessee or similar relief; or

   (vii) The occurrence of any of the foregoing with respect to any guarantor of Lessee’s obligations under this Lease.

20. DEFAULT REMEDIES

If an Event of Default occurs by Lessee that is not cured by Lessee, Lessor shall have all of the following rights and remedies in addition to all other rights and remedies available to Lessor at law or in equity:

(a) Lessor may:
(i) terminate this Lease without further notice, whereupon Lessor shall enter and take possession of the Premises for the account of Lessor, in accordance with any Laws governing such repossession, and remove Lessee;

(ii) without terminating the Lease, enter and take possession of the Premises for the account of Lessee, in accordance with any Laws governing such repossession, and remove Lessee.

If necessary, Lessor may proceed to recover possession of the Premises under applicable Laws, or by such other legal proceedings, including summary disposess proceedings. Lessor’s exercise of any of its remedies or its receipt of Lessee’s keys shall not be considered an acceptance or surrender of the Premises by Lessee. A surrender must be agreed to in writing and signed by both parties. If Lessor terminates this Lease or terminates Lessee’s right to possess the Premises because of an Event of Default, then everything in this Lease to be done by Lessor shall cease, without prejudice; however, to Lessee’s liability for all Rent and other sums due hereunder. Lessee waives all right to receive a notice of eviction required by Florida Statute SS 83.20.

(b) Lessor may hold Lessee liable for:

(i) rent and other indebtedness that otherwise would have been payable by Lessee to Lessor for the balance of the Term, less any amount that Lessor receives from re-letting the Premises after all of Lessor’s costs and expenses incurred in such re-letting have been subtracted;

(ii) any amounts Lessor incurs in re-letting the Premises during the remainder of the Term; and

(iii) other necessary and reasonable expenses including, without limitation, reasonable attorneys’ fees incurred by Lessor in enforcing its remedies.

Additionally, at the option of Lessor, Lessor shall be entitled to accelerate and declare the entire remaining unpaid Rent for the balance of the Term to be immediately due and payable.

(c) Lessor shall have no obligation to re-let the Premises. However, Lessor may re-let the Premises or any part thereof, alone or together with other premises, for such term(s) which may extend beyond the date on which the Lease Term would have expired but for Lessee’s default and on such terms and conditions which may include concessions or free rent and alterations of the Premises as Lessor, in its sole discretion, may determine. Lessor shall not be liable for, nor shall Lessee’s obligations be diminished by reason of, Lessor’s failure to re-let the Premises or collect any rent due upon such re-letting. If Lessor re-lets the
Premises and collects rent in excess of the Rent and other Rent items owed by Lessee hereunder, Lessor shall be entitled to retain any such excess and Lessee shall not be entitled to a credit therefor.

(d) Lessor’s rights and remedies set forth in this Lease are cumulative and in addition to Lessor’s other rights and remedies at law or in equity, including those available because of any anticipatory breach of this Lease. Lessor’s exercise of any such right or remedy shall not prevent the concurrent or subsequent exercise of any other right or remedy. Lessor’s delay or failure to exercise or enforce any of Lessor’s right or remedies or Lessee’s obligations shall not constitute a waiver of any such rights, remedies or obligations. Lessor shall not be deemed to have waived any default unless such waiver expressly is set forth in an instrument signed by Lessor. Any such waiver shall not be construed as a waiver of any covenant or condition except as to the specific circumstances described in such waiver. Neither Lessee’s payment of an amount less than a sum due nor Lessee’s endorsement or statement on any check or letter accompanying such payment shall be deemed an accord and satisfaction. Notwithstanding any request or designation by Lessee, Lessor may apply any payment received from Lessee to any payment then due. Lessor may accept the same without prejudice to Lessor’s right to recover the balance of such sum or to pursue other remedies. Re-entry and acceptance of keys shall not be considered an acceptance of a surrender of this Lease.

21. ASSIGNMENTS AND SUBLETTING

Lessee covenants and agrees not to assign, mortgage, encumber or sublet said Leased Premises or any part of same or in any other manner transfer the Lease Agreement, Leasehold or Lease Premises. This prohibition shall also apply to a transfer of the controlling interest of the stock in the Lessee, if Lessee is a corporation, and to transfer of a controlling interest in a partnership, if Lessee is a general or limited partnership.

22. ATTORNMENT

(a) Each of the provisions of this Lease shall extend to and shall, as the case may require, bind or inure to the benefit of Lessor and Lessee and their respective subsidiaries, affiliates, heirs, legal representatives, successors and assigns.

(b) In the event the Lessor should sell the Property, including the Premises, the sale shall include full assignment of the terms and conditions of this Lease and Lessee’s right to possession of the Premises shall not be disturbed.

23. APPROVAL

In all cases where consent or approval shall be required of either Lessor or Lessee pursuant to the Lease, the giving of such consent shall not be unreasonably withheld, delayed or conditioned by the party from whom such consent is required.
24. BANKRUPTCY AND INSOLVENCY

(a) If at any time during the term hereof a receiver of the business or assets of the Lessee be appointed, or if the Lessee makes an assignment for the benefit of creditors, or if any Sheriff or his agent take possession of the Leased Premises or assets located thereon by virtue of any attachment or execution proceedings, then the Lessor may, at its option, and without notice to the Lessee, take possession of the Leased Premises and terminate this Lease. Upon such termination, all rent shall at once become due and payable, and in addition thereto, the Lessor shall have all rights provided by law. If at any time during the term hereof proceedings in bankruptcy shall be instituted by or against the Lessee, and the trustee in bankruptcy elects to assume the unexpired term of this Lease, then such trustee shall promptly cure any existing default existing under a term or provision of the Lease and shall provide to Lessor adequate assurance of future performance as required under Section 365(b) of the Bankruptcy Code or any amendments thereto. Such adequate assurance shall include, but not be limited to:

(i) adequate assurance of the source of rent.

(ii) adequate assurance that assumption or assignment of this Lease or subletting of the Leased Premises is not contrary to the general uses of other Lessees in the building in which the Leased Premises are located.

(iii) adequate assurance that assignment of this Lease or subletting the Leased Premises shall not constitute a default under any mortgage encumbering the building in which the Leased Premises are a part and adequate assurance that such trustee assignment of this Lease or subletting the Leased Premises shall not be to any party whose credit worthiness or reputation is subject to reasonable question by Lessor.

(b) The parties hereto acknowledge that the foregoing provisions are the minimal requirements necessary to protect Lessor from an increased risk of future default under this Lease. Notwithstanding any other provision in this Lease, in the event that the Lessee files for bankruptcy or is adjudged a bankrupt, the security deposit referred to herein shall be considered advance rent and shall be applied to the rental due hereunder.

25. SUBORDINATION, ESTOPPEL, RIGHT TO TRANSFER

Lessee accepts this Lease subject and subordinate to any mortgage now or at any time hereafter constituting a lien or charge upon the Leased Premises or the building in which the Leased Premises are a part. Lessee shall, on demand, execute any instrument, which may be required by any Mortgagee for the purpose of subjecting and subordinating this Lease to the lien of any such mortgage or deed of trust. Upon three (3)
days prior written notice from Lessor, Lessee shall execute and deliver to Lessor a statement in writing (1) certifying that this Lease is unmodified and in full force and effect and the dates to which the rent and other charges are paid in advance, if any, and (2) acknowledging that to Lessee’s knowledge there are not any uncured defaults on the part of Lessor hereunder and that Lessee has no right of offset, counterclaim or deduction in rent or specifying such defaults, if any, of claim, together with the amount of any offer, counterclaim or deduction alleged by Lessee. Any such statement may be relied upon by any prospective purchaser or lender upon the security of the real property of which the Leased Premises are a part. Lessee’s failure to deliver said statement within such time shall constitute agreement by Lessee (1) that this Lease is in full force and effect without modification except as may be represented by Lessor, (2) that there are no uncured defaults in Lessor’s performance and that Lessee has no right of offset, counterclaim or deduction against rent and (3) that no more than one month’s rent has been paid in advance.

Lessor shall have the right to transfer and assign in whole or in part all and every feature of its rights and obligations hereunder in the Leased Premises. Such transfers and assignments are to be in all things respected and recognized by Lessee, and upon assumption of Lessor’s obligations hereunder by said transferee or assignee, Lessor shall be relieved of all further liabilities and obligations hereunder.

26. LIABILITY

(a) As a material part of the consideration to be rendered to Lessor under this Lease, Lessor shall not be liable for damage to property of Lessee or of others located on the Leased Premises, nor for the loss of or damage to any property of Lessee or of others by theft, casualty loss or otherwise, nor shall Lessor be liable to Lessee for losses arising from the inability of Lessee to operate its business for any reason whatsoever, and Lessee hereby waives all such claims against Lessor and will hold Lessor exempt and harmless for or on account of such damage or injury. Lessor shall not be liable for any injury or damage to persons or property resulting from, but not limited to, fire explosion, falling plaster, steam, gas, electricity, water, rain or leaks from any part of the Leased Premises or from the pipes, appliances or plumbing works or from the roof, street or subsurface or from any place or by dampness or by any other cause of whatsoever nature. Lessor shall not be liable for any such damage caused by other Lessees or persons in the Leased Premises, occupants of adjacent property or the public, or caused by operations in construction of any private, public quasi-public work.

(b) All property of the Lessee kept or stored on the Leased Premises shall be so kept or stored at the risk of the Lessee and Lessee shall hold Lessor harmless from any claims arising out of damage to the same, including subrogation claims by Lessee’s insurance carriers.
27. INDEMNIFICATION

(a) Lessee shall indemnify, defend and hold Lessor harmless from and against any and all claims, losses, costs, liabilities, damages and expenses including, without limitation, penalties, fines and reasonable attorneys’ fees to the extent incurred in connection with or arising from:

(i) the use or occupancy or manner of use or occupancy of the Premises or any injury or damage caused by Lessee, Lessee Parties or any person occupying the Premises through Lessee;

(ii) the introduction or presence of Hazardous Substances or other environmental conditions in, on, under or about the Premises as a result of the actions of Lessee or its agents, employees, representatives or contractors; or

(iii) a default by Lessee under this Lease.

(b) Lessor shall indemnify, defend and hold Lessee harmless from and against any and all claims, losses, costs, liabilities, damages and expenses including, without limitation, penalties, fines and reasonable attorneys’ fees to the extent incurred in connection with or arising from:

(i) any injury or damage caused by any negligent or willful acts of Lessor; or

(ii) a default by Lessor under this Lease.

(c) The terms of this Section 27 shall survive the expiration or sooner termination of this Lease.

28. CONDITION OF PREMISES: REPAIR

Subject to the duties of the Lessor as otherwise provided herein, the Lessee will keep the Leased Premises in such repair as the same are at the commencement of the said term or may be put in by the Lessor during the continuance thereof, damage due to reasonable wear and tear and damage by fire or other casualty excepted.

29. CONDEMNATION

(a) If all of the Premises are condemned or taken in any permanent manner before or during the Term for any public or quasi-public use, or any permanent transfer of the Premises is made in avoidance of an exercise of the power of eminent domain (each of which events shall be referred to as a “taking”), this Lease shall automatically terminate as of the date of the vesting of title due to such tak-
ing. If a part of the Premises is so taken, this Lease shall automatically terminate as to the portion of the Premises so taken as of the date of the vesting of title as a result of such taking. If such portion of the Premises is taken as to render the balance of the Premises unusable by Lessee for the permitted use, as reasonably determined by either Lessor by written notice to Lessee given within fifteen (15) days following notice to Lessor of the date on which said vesting will occur. If this Lease is not terminated as a result of any taking, Lessor shall restore the Kress Building to an architecturally whole unit provided, however, that Lessor shall not be obligated to expend on such restoration more than the amount of condemnation proceeds actually received by Lessor.

(b) Lessor shall be entitled to the entire award for any taking, including, without limitation, any award made for the value of the leasehold estate created by this Lease. No award for any partial or entire taking shall be apportioned, and Lessee thereby assigns to Lessor any award that may be made in any taking, together with any and all rights of Lessee now or hereafter arising in or to such award or any part thereof; provided, however, that nothing contained herein shall be deemed to give Lessor any interest in or to require Lessee to assign to Lessor any separate award made to Lessee for its relocation expenses, the taking of personal property and fixtures belonging to Lessee, the unamortized value of improvements made or paid for by Lessee or the interruption of or damage to Lessee’s business.

(c) In the event of a partial taking that does not result in a termination of this Lease as to the entire Premises, Rent shall be equitably adjusted in relation to the portions of the Premises and building taken or rendered unusable by such taking.

(d) If all or any portion of the Premises is taken for a limited period of time before or after Term, this Lease shall remain in full force and effect; provided, however, that Rent shall abate during such limited period in proportion to the portion of the Premises taken by such taking. Lessor shall be entitled to receive the entire award made in connection with any such temporary taking provided, however, that nothing contained herein shall be deemed to give Lessor any interest in or to require Lessee to assign to Lessor any separate award made to Lessee for its relocation expenses, the taking of personal property and fixtures belonging to Lessee, the unamortized value of improvements made or paid for by Lessee or the interruption of or damage to Lessee’s business.

30. RULES AND REGULATIONS

Lessor shall have the right from time to time to prescribe reasonable rules and regulations for Lessee’s use of the Premises and common areas upon written advance notice to Lessee. Lessee shall observe and comply with such rules, if any, provided that such rules and regulations are consistent with the terms and provisions of this Lease.
31. IDENTIFICATION FOR TAX PURPOSES

Lessee shall provide Lessor with its identifying number for recording and reporting of income and/or expenses as may be required by the Federal government.

32. AUTHORITY OF LESSEE

If Lessee is other than a sole proprietorship prior to occupancy of the Leased Premises, Lessee shall provide Lessor with such documentation as is necessary to legally identify Lessee and provide evidence of the authority of the party executing this Lease to bind the Lessee. If Lessee is a corporation, it shall supply Lessor with a copy of its Articles of Incorporation and a Certificate of Incumbency setting forth the names of all directors and officers of the corporation. If Lessee is a limited partnership, it shall supply Lessor with a copy of its Certificate of Limited Partnership. If Lessee is a general partnership, it shall supply Lessor with a copy of its Certificate of General Partnership which shall set both the name and residence address of each partner.

33. WAIVER AND COVENANTS

It is hereby covenanted and agreed that no waiver of a breach of any of the covenants of this Lease shall be construed to be a waiver of any succeeding breach of the same or any other covenant. The covenants in this Lease shall be construed as mutually independent covenants.

34. TITLES, PRONOUNS

The titles and headings of this Lease are for convenience and reference only and shall not in any way be deemed a part of this Lease for the purpose of construing or interpreting the meanings thereof or for any other purpose.

35. FORCE MAJEURE

If Lessor or Lessee is delayed or prevented from performing any of their obligations under this Lease when and to the extent such failure or delay is caused by or results from acts beyond either party’s control without limitation, the following Force Majeure events:

(a) Act of God
(b) Flood, fire, weather, earthquake or explosion
(c) War, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest
(d) Government order or law
(e) Actions, embargoes or blockades in effect on or after the date of this Lease

(f) Action by any governmental authority

(g) National or regional emergency

(h) Strikes, labor stoppages or slowdowns or other industrial disturbances

(i) Pandemic

(j) Shortage of adequate power or transportation facilities

the period of such day or such prevention shall be deemed added to the time herein provided for the performance of any such obligation by Lessor or Lessee, except for the payment of Rent and all other monetary obligations payable by Lessee in accordance herewith which risk Lessee hereby assumes. Lessee hereby acknowledges, consents and agrees that any and/or all services, facilities and access by the public to the Premises may be suspended in whole or in part during such temporary times as may be declared by local, state or federal authorities and/or during any periods of actual or threatened civil commotion, insurrection or other circumstances beyond Lessor’s control.

36. GOVERNING LAW

The Laws of the State of Florida shall govern the validity, performance, interpretation and enforcement of this Lease. Lessee connects to personal jurisdiction and venue in the state and judicial district in which the Premises is located. The courts of the state where the Kress Building is located will have exclusive jurisdiction and Lessee hereby agrees to such exclusive jurisdiction.

37. MISCELLANEOUS PROVISIONS

(a) Lessee shall each indemnify, defend and hold harmless the Lessor from and against any claim or claims for any broker’s fee or commission asserted by any broker, agent or finder employed by Lessee. The provisions of this Section 37 shall survive the expiration or other termination of this Lease.

(b) The terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of Lessor and Lessee and, except as otherwise expressly provided herein, their respective personal representatives, successors and assigns provided, however, that upon the sale, assignment or transfer by Lessor (or any subsequent Lessor) of its interest in the Building or the Premises as owner or Lessee including, without limitation, any transfer upon or in lieu of foreclosure or by operation of law, Lessor (or subsequent Lessor) shall be relieved from all sub-
sequent obligations or liabilities under this Lease and all obligations subsequent
to such sale, assignment or transfer, but not any obligations or liabilities that have
accrued prior to the date of such sale, assignment or transfer, shall be binding
upon the grantee, assignee or other transferee of such interest. Any such
grantee, assignee or transferee by accepting such interest shall be deemed to
have assumed such subsequent obligations and liabilities.

(c) If any provision of this Lease or the application thereof to any person or
circumstance shall, to any extent, be invalid or unenforceable, the remainder of
this Lease or the application of such provision to persons or circumstances other
than those as to which it is invalid or unenforceable shall not be affected thereby
and each provision of this Lease shall remain in effect and shall be enforceable
to the full extent permitted by law.

(d) The terms of this Lease are intended by the parties as a final expression
of their agreement with respect to such terms as are included in this Lease and
may not be contradicted by evidence of any prior or contemporaneous agree-
ment, arrangement, understanding or negotiation, whether oral or written. The
parties further intend that this Lease constitutes the complete and exclusive
statement of its terms and no extrinsic evidence whatsoever may be introduced
in any judicial proceeding involving this Lease. Neither Lessor nor Lessor’s
agents have made any representations or warranties with respect to the Premises,
the Building or this Lease except as expressly set forth herein. The language
in all parts of this Lease shall in all cases be construed as a whole and in accor-
dance with its fair meaning and not construed for or against any party by reason
of such party having drafted such language.

(e) All of Lessor’s and Lessee’s covenants and obligations contained in this
Lease which, by their nature, might not be fully performed or capable of perfor-
mance before the expiration or earlier termination of this Lease shall survive such
expiration or earlier termination. No provision of this Lease providing for termina-
tion in certain events shall be construed as a limitation or restriction of Lessor’s
or Lessee’s rights and remedies at law or in equity available upon a breach by
the other party of this Lease.

(f) This Lease may only be amended, modified or supplemented by an
agreement in writing duly executed by both Lessor and Lessee.

(g) LESSOR AND LESSEE KNOWINGLY, INTENTIONALLY AND VOLUN-
TARILY WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING
BROUGHT BY EITHER PARTY AGAINST THE OTHER IN ANY MATTER ARIS-
ING OUT OF THIS LEASE, THE RELATIONSHIP OF LESSOR AND LESSEE,
LESSEE’S USE OR OCCUPANCY OF THE PREMISES OR ANY CLAIM OF
INJURY OR DAMAGE.
(h) DELIVERY OF THE LEASE TO EITHER PARTY SHALL NOT BIND ANY PARTY IN ANY MANNER AND NO LEASE OR OBLIGATIONS OF LESSOR OR LESSEE SHALL ARISE UNTIL THIS INSTRUMENT IS SIGNED BY BOTH LESSOR AND LESSEE AND DELIVERY IS MADE TO EACH PARTY.

(i) RADON GAS: Radon is naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.

(j) In connection with any litigation arising out of the enforcement or interpretation of this Lease, the pressing party shall be entitled to recover from the other all costs incurred, including reasonable attorneys’ fees, including without limitation trial, appellate proceedings and bankruptcy.

(k) Time is of the essence of this Lease.

38. SPECIAL CONDITION

Notwithstanding anything to the contrary, in the event the Volusia County Charter is amended to eliminate or terminate as a legal entity the Volusia Growth Management Commission, then this Lease shall immediately as of the date of such amendment, all of tenants obligations herein shall cease and tenant shall vacate the leased premises.

39. NOTICES

For purposes of this Lease, all notices required to be given in writing shall be deemed delivered to Lessee if directed through the US Mail via certified or register mail or overnight delivery service with verification for delivery as follows:

Lessor: Mac II of Volusia LLC
140 S. Beach St. #310
Daytona Beach, FL 32114

Telephone: 386-290-0411

Email: Leasing@KressDaytona.com

Taxpayer ID Number: 26-1611808
40. ENTIRE AGREEMENT AND AMENDMENT

It is expressly understood by the parties that this Lease and any riders attached thereto set forth all the promises, agreements, representations, covenants and understandings between Lessor, or its agent, and Lessee relative to the Leased Premises, and that there are no other promises, agreements, representations, covenants, or understandings between them other than herein set forth. It is further understood and agreed that except as otherwise provided herein, no subsequent alteration, amendment, change, or addition to this Lease shall be binding upon Lessor or Lessee unless reduced to writing and signed by them and by direct reference therein made a part hereof.

IN WITNESS WHEREOF, the parties have executed this Lease as of the day and year first above written.

LESSOR:

MAC II OF VOLUSIA LLC

________________________
Fred E. Cleveland

LESSEE:

VOLUSIA GROWTH MANAGEMENT COMMISSION

________________________
By: _____________________________