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December 19, 2018

M E M O R A N D U M

TO: Mary Ellen Donner, Parks and Recreation Director

RE: Item F.5., Approval of Second Amendment to the Trail Access Lease with Modern, Inc. for Fox Lake Sanctuary

The Board of County Commissioners, in regular session on December 18, 2018, authorized Chair to execute the Second Amendment to Trail Access Lease to Fox Lake Sanctuary. Enclosed is a fully-executed copy of the Amendment.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe

Tammy Rowe, Deputy Clerk

/cmw

Encl. (1)

cc: EEL Program Manager
Contracts Administration
Finance
Budget

RECEIVED

[Signature]

JAN - 3 2018

BREVARD COUNTY EEL PROGRAM
ADMINISTRATION

SECOND AMENDMENT TO TRAIL ACCESS LEASE

THIS SECOND AMENDMENT TO TRAIL ACCESS LEASE made and entered the date of last signature below between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida, located at 2725 Judge Fran Jamieson Way, Building C, Viera, Florida, 32940 ("Lessee"), and MODERN, INC., a Florida Corporation, whose address is PO Box 1417, Cocoa Beach, Florida, 32932 ("Owner").

WITNESSETH:

WHEREAS, the Lessee owns certain real property known as Fox Lake Sanctuary (the "Sanctuary"), which is managed by the Brevard County Environmentally Endangered Lands ("EEL") Program; and

WHEREAS, the Sanctuary is separated from additional Lessee-owned land known as Fox Lake Park by private land of the Owner; and

WHEREAS, in order to provide a better recreational trail experience to visitors, the Lessee and the Owner entered into an agreement on May 28, 2013 (the "Trail Access Lease"), which is attached hereto and incorporated herein by reference, to establish an alternate route allowing public recreational access through an area of Owner's property; and

WHEREAS, an amendment to the Trail Access Lease was entered into in 2017 (the "First Amendment to the Lease"), which is attached hereto and incorporated herein by reference, in order to relocate the area of Owner's property designated as the "Trail" to provide better public access to Lessee's property; and

WHEREAS, the Trail Access Lease is set to expire on December 29, 2018, and both parties desire to extend the term for an additional five (5) years, through December 29, 2023, and update the contact information relating to notices.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the Parties affirm the obligations under the Trail Access Lease and the First Amendment to the Lease as follows:

1. Section 2 "Term" of the Trail Access Lease is hereby amended to read as follows:

The term of the Lease is set to expire on December 29, 2018 (the "Lease Term"). Both Parties agree to extend the term of the Lease for five (5) additional years through December 29, 2023, unless sooner terminated (the "Extended Lease Term"). Should either party desire to terminate the Lease at any time during the Lease Term or Extended Lease Term, then the terminating party shall provide the other party with ninety (90) days written notice.

2. Section 11 "Notices" is hereby amended to read as follows:

Any notice, demand, request or other instrument which may be or required to be given under this Lease, shall be delivered in person, via facsimile, sent by United States Certified or Registered Mail, postage prepaid, or sent by a reputable overnight courier service, and shall be addressed to either party at the address as hereinabove given. Any notice shall be deemed delivered upon hand delivery or three (3) days after depositing such notice in postal receptacles, return-receipt requested or one (1) day after depositing such notice with a reputable overnight courier service. Either party may designate such other address as shall be given by written notice as follows:

If to Owner: Modern, Inc.
PO Box 1417
Cocoa Beach, FL 32932

If to Lessee: Mike Knight, Program Manager
Brevard County EEL Program:
91 East Drive
Melbourne, FL 32904

With a copy to: Mary Ellen Donner, Director
Brevard County Parks and Recreation Department
2725 Judge Fran Jamieson Way
Viera, Florida 32940

3. All other terms and conditions of the Trail Access Lease and First Amendment to the Lease not inconsistent with this Second Amendment shall remain in full force and effect.

(Signatures begin on next page)

IN WITNESS WHEREOF, the Parties hereto have entered into this Second Amendment to the Trail Access Lease as of the day and year written below.

Attest:

"OWNER"
Modern, Inc.

By: Michael Moehle, Pres.

Name: Michael Moehle

Date: 11/5/2018

Position: President

By: Scott Ellis
Scott Ellis, Clerk

"LESSEE"

Brevard County Board of County
Commissioners

As approved by the Board on: / /

By: Kristine Isnardi
KRISTINE ISNARDI, CHAIR

Name: Kristine Isnardi

Date: December 18, 2018

As approved by the Board 12/18/18

Reviewed for legal form and content:

Alex Esscesse
Alex Esscesse, Assistant County Attorney

10/25/18
Date