



Tammy Etheridge, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001  
Fax: (321) 264-8972

May 29, 2013

MEMORANDUM

TO: Jack Masson, Parks and Recreation Director

RE: Item III.B.10., Trail Access Lease with Modern Inc. for Fox Lake Sanctuary

The Board of County Commissioners, in regular session on May 28, 2013, executed Trail Access Lease with Modern Inc. for trail access for non-vehicular public access to Fox Lake Sanctuary. Enclosed are two fully-executed copies of the Lease.

Your continued cooperation is greatly appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

A handwritten signature in cursive script that reads "Tammy Etheridge".

Tammy Etheridge, Deputy Clerk

Encls. (2)

cc: EEL Program Manager  
Contracts Administration  
Finance  
Budget

*orig. EEL ✓  
cc: Agenda File  
Clerk File  
EEL File  
Robyn*

RECEIVED

JUN 4 2013

BREVARD COUNTY EEL PROGRAM  
ADMINISTRATION



**COPY**

*Signed*

**TRAIL ACCESS LEASE**

**THIS TRAIL ACCESS LEASE** made this 28 day of May 2013, between 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").

**WHEREAS**, the Lessee owns certain real property known as Fox Lake Sanctuary. The sanctuary is separated from additional County owned land, known as Fox Lake Park, by private land of the "Owner". The location of Fox Lake Sanctuary, Fox Lake Park and the Owner's land is depicted in Exhibit "A", attached and incorporated by reference herein; and

**WHEREAS**, the County has determined that although legal access to the Sanctuary does exist through the Lessee's property, an alternate route leased from the Owner would provide visitors with a better recreational trail experience. This leased access is referred to as the "Trail" and is generally depicted in Exhibit "A"; and

**NOW**, therefore, for good and valuable consideration, the receipt of which is hereby acknowledged, the Parties affirm the obligations under the Access Lease as follows:

**1. PROPERTY:**

In consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the Lessee to be observed and performed, the Owner demises and leases to the Lessee, and the Lessee rents from the Owner the property described in Exhibit "B", referred to as the Trail, for use as a recreational access trail.

**2. TERM:**

The term of the Lease shall commence on the effective date of the Lease and expire on December 29, 2018, unless sooner terminated (the "Lease Term"). Should either party desire to terminate the Lease at any time during the Lease Term, then the terminating party shall provide the other party with ninety (90) days written notice. The Parties may agree to extend this Lease for up to two additional one-year terms. Any extensions must be approved in writing by both Parties prior to termination of this Lease.

**3. RENTAL CONSIDERATION:**

For the term of this Lease, Lessee agrees to pay Owner \$1.00 per day, payable in advance every six months, for the term of this Lease. Said sum shall be paid to Owner in lawful money of the United States of America, which shall be legal tender at the time of payment, at the office of Owner or to such other person or at such place as Owner may

from time to time designate in writing. In the event Owner exercises its right to terminate the lease as set forth in section 2 above, during any term for which the rent has been paid, the Owner will, upon vacation and surrender of possession of the Trail by Lessee, reimburse Lessee any excess rent paid in advance for the balance of the applicable term. The amount to be reimbursed to Lessee shall be calculated by taking the rental amount paid minus the number of days occupied by the Lessee at the time of surrender of the Trail by Lessee.

**4. USE OF TRAIL:**

During the term of this Lease and any extension thereof, Lessee shall use the Trail only for non-vehicular public access to the Fox Lake Sanctuary.

The trail will be a natural surface foot path with a cleared width of no more than 8 feet. The trail shall be contained within the boundaries of the attached "Legal Description of Trail Lease" (Exhibit B).

**5. SIGNAGE:**

Lessee shall be responsible for the costs of fabrication, installation and maintenance of appropriate signage to keep visitors on the leased trail, and identify the Owners property adjacent to the trail as private property. Should Owner note that any maintenance or repairs to the signage is required, it shall immediately notify Lessee of same. Lessee shall be responsible for keeping trail users off Owner's other property. Lessee may install fencing along the trail, at its option and cost.

**6. LESSEE'S OBLIGATIONS:**

A. Lessee shall not permit, commit, or suffer any waste, impairment or deterioration of Owner's other property and of the Trail or any part thereof

B. Lessee shall not create or excavate any lakes, canals or ditches on any property except that Lessee may clear the property for the Trail within the Trail boundaries.

C. Lessee shall on the expiration or the sooner of the termination of this Lease term, surrender to the Owner the Trail in good condition, repair and free of debris, reasonable wear and tear accepted.

**7. ACCESS:**

Owner shall also have the right to enter the Trail at all reasonable times to inspect any property for compliance with this Lease.

**8. ALTERATIONS:**

Lessee shall not make any alterations or improvements to the Trail other than what is described in this Lease without the prior written consent of Owner. Lessee shall present to Owner plans and specifications for such work at the time approval is sought. If Lessee is permitted to make alterations, Lessee shall furnish to Owner, upon completion of same,

a certified statement showing the total cost of such alterations and satisfactory evidence that payment for same has been made in full. To the extent allowed by law, as to any work performed by Lessee, Lessee shall indemnify and hold Owner harmless from any liens, claims or other liabilities that may be filed on or made against Owner or the Trail as a result of such work performed by Lessee. Nothing contained in this Agreement shall be construed as a waiver of Lessee's right to sovereign immunity under Section 768.28, Florida Statutes, or other limitations imposed on Lessee's potential liability under state or federal law. Any alterations or improvements made by Lessee shall become a part of the realty and be the sole property of Owner upon expiration or termination of this Agreement unless Lessee elects to remove such alterations and improvements and such removal can be done without damage or injury to the Trail.

**9. INDEMNITY:**

Except for losses, damages and claims arising out of the acts or omissions of Owner or Owner's agents, contractors and employees, Lessee agrees to indemnify and hold harmless Owner against all claims, damages, losses, and expenses, including attorney's fees, arising out of or resulting from Lessee's use of the Trail, if such claims, damages, losses, or expenses are caused solely by the negligent or wrongful acts of Lessee. However, nothing contained herein shall constitute a waiver by either party of its sovereign immunity or the provisions of Section 768.28, Florida Statutes, or other limitations imposed on Lessee's potential liability under state or federal law. Nothing herein shall be construed as consent to be sued by third parties.

Lessee, upon notice from Owner, shall defend the same at Lessee's expense by counsel acceptable to Owner. Likewise, Owner shall indemnify and hold harmless Lessee from and against any and all claims arising from any activity, work or things done, permitted or suffered by Owner in or about the Trail to the extent that such claims, damages, losses, or expenses are caused solely by the negligent or wrongful acts of the Owner or its employees. Owner, upon notice from Lessee, shall defend the same at Owner's expense by counsel acceptable to Owner.

**10. INSURANCE:**

At all times during the term hereof, Lessee shall maintain, at its sole cost and expense, policies in effect to insure against claims resulting from Lessee's activities relating to this Lease for personal injury or property damage under a policy of general public Liability insurance, with limits of at least \$500,000 for bodily injury and \$100,000 for property damage. All insurance required to be carried by Lessee hereunder shall be issued by responsible insurance companies, qualified to do business in the State of Florida reasonably acceptable to Owner. Each policy shall name Owner, as an additional insured, on insurance certificates evidencing the existence and amounts of such insurance and shall be delivered to Owner by Lessee at least ten (10) days prior to Lessee's occupancy of the Premises.

**11. NOTICES:**

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:** Jack Masson, Director  
Brevard County Parks and Recreation Department  
2725 Judge Fran Jamieson Way  
Viera, Florida 32940

**12. ATTORNEY'S FEES AND COSTS:**

In the event of any legal action to enforce the terms of this Lease, each party shall bear its own attorney's fees and costs.

**13. APPLICABLE LAW AND VENUE:**

This Lease shall be interpreted and construed in accordance with and governed by the laws and ordinances of Brevard County and the State of Florida. Venue for any legal action brought by any party to this Lease to interpret, construe or enforce this Lease shall be in a court of competent jurisdiction in and for Brevard County, Florida, and any trial shall be non-jury.

**14. AMENDMENTS:**

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Lease and executed by County.

**15. ENTIRE LEASE:**

This Lease incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Lease that are not contained in the Lease.

Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms and conditions contained herein shall be effective unless contained in a written document in accordance with paragraph 14 above.

**16. SUCCESSION OF AGREEMENT:**

This Lease and the rights and obligations contained herein shall insure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

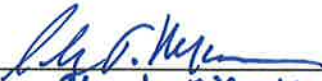
(Signatures begin on next page)

**IN WITNESS WHEREOF**, the parties hereto have signed and seal this Trail Access Lease as of the day and year first above written.

Signed, sealed and delivered  
in the presence of:

**"OWNER"**


**Modern Inc.**

By:   
Name: Charles F. Moehle  
Its: President

**"LESSEE"**

**Brevard County Board of County  
Commissioners**

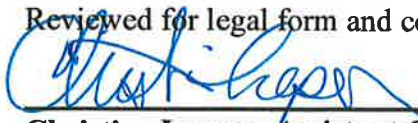
As approved by the Board on 5-28-2013

By:   
Name: Andy Anderson  
Its: Chairman

Attest:

  
Scott Ellis, Clerk of Court

Reviewed for legal form and content:

  
Christine Lepore, Assistant County Attorney

May 7, 2013  
Date



**Exhibit A:**

**Map of Owner's Property and Location of Trail Lease**





EXHIBIT "B"

SKETCH AND LEGAL OF TRAIL ACCESS LEASE

LEGAL DESCRIPTION

SHEET 1 OF 3

NOT VALID WITHOUT SHEETS 2 AND 3 OF 3

SECTION 12, TOWNSHIP 22 SOUTH, RANGE 34 EAST

PORTION OF PARCEL ID NUMBER:

22-34-12-00-00501.0-0000.00 OWNED BY MODERN INC.

PURPOSE: TO ACQUIRE AN 8.00 FOOT WIDE INGRESS-EGRESS EASEMENT IN FAVOR OF BREVARD COUNTY

ABBREVIATIONS

CCMB - COUNTY COMMISSIONERS MINUTE BOOK
ORB - OFFICIAL RECORD BOOK
L40 - LINE TABLE NUMBER

"EXHIBIT A"

LEGAL DESCRIPTION:

(PREPARED BY SURVEYOR, MARCH 27, 2013)

A STRIP OF LAND 8.00 FEET WIDE WHICH LIES OVER AND ACROSS A PORTION OF THOSE LANDS AS DESCRIBED IN OFFICIAL RECORDS BOOK 3105, PAGE 0846 WHICH IS BOUND ON THE EAST BY THE WEST LINE OF THE LANDS AS DESCRIBED IN OFFICIAL RECORDS BOOK 0688, PAGE 0880 AND ON THE WEST BY THE EAST LINE OF THE LANDS AS DESCRIBED IN OFFICIAL RECORDS BOOK 5887, PAGE 5806, ALL AS RECORDED IN THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA AND LYING IN SECTION 12, TOWNSHIP 22 SOUTH, RANGE 34 EAST; SAID 8.00 FOOT WIDE STRIP LYING 4.00 FEET ON EACH/BOTH SIDES OF THE FOLLOWING DESCRIBED CENTERLINE:

COMMENCE AT THE SOUTHEAST CORNER OF THE SOUTHEAST 1/4 OF SAID SECTION 12; THENCE S.88°57'38"W. ALONG THE SOUTH LINE OF SAID SECTION 12 FOR A DISTANCE OF 3,450.00 FEET TO THE SOUTHWEST CORNER OF SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 0688, PAGE 0880; THENCE DEPARTING SAID SOUTH LINE, N.00°49'35"W ALONG THE WEST LINE OF SAID LANDS FOR A DISTANCE OF 887.19 FEET TO THE POINT OF BEGINNING OF THE HEREON DESCRIBED CENTERLINE; THENCE DEPARTING SAID WEST LINE, OVER AND ACROSS SAID LANDS AS DESCRIBED IN OFFICIAL RECORDS BOOK 3105, PAGE 0846 FOR THE FOLLOWING THIRTY (30) COURSES TO WIT: S.87°05'40"W. FOR A DISTANCE OF 21.58 FEET; S.65°15'37"W. FOR A DISTANCE OF 52.95 FEET; S.54°06'28"W. FOR A DISTANCE OF 35.25 FEET; S.38°37'08"W. FOR A DISTANCE OF 50.61 FEET; S.25°21'28"W. FOR A DISTANCE OF 40.13 FEET; S.29°56'35"E. FOR A DISTANCE OF 17.79 FEET; S.13°37'11"W. FOR A DISTANCE OF 23.13 FEET; S.38°50'38"W. FOR A DISTANCE OF 16.11 FEET; S.28°08'15"W. FOR A DISTANCE OF 22.54 FEET; N.58°59'13"W. FOR A DISTANCE OF 31.20 FEET; S.86°00'10"W. FOR A DISTANCE OF 45.47 FEET; N.70°24'54"W. FOR A DISTANCE OF 22.56 FEET; N.38°20'42"W. FOR A DISTANCE OF 58.15 FEET; N.18°34'46"E. FOR A DISTANCE OF 21.42 FEET; N.33°04'23"W. FOR A DISTANCE OF 7.05 FEET; N.78°43'50"W. FOR A DISTANCE OF 37.44 FEET; N.33°38'57"W. FOR A DISTANCE OF 20.25 FEET; N.44°34'20"W. FOR A DISTANCE OF 26.52 FEET; N.53°20'37"W. FOR A DISTANCE OF 15.18 FEET; N.06°48'16"W. FOR A DISTANCE OF 25.28 FEET; N.62°51'06"W. FOR A DISTANCE OF 10.33 FEET; S.88°23'08"W. FOR A DISTANCE OF 25.14 FEET; N.58°00'49"W. FOR A DISTANCE OF 22.78 FEET; N.59°32'53"W. FOR A DISTANCE OF 18.14 FEET; N.43°48'13"W. FOR A DISTANCE OF 20.34 FEET; N.77°14'02"W. FOR A DISTANCE OF 33.29 FEET; S.45°06'08"W. FOR A DISTANCE OF 31.24 FEET; S.75°45'51"W. FOR A DISTANCE OF 8.67 FEET; N.65°41'22"W. FOR A DISTANCE OF 17.95 FEET; N.61°41'10"W. FOR A DISTANCE OF 31.63 FEET TO THE EAST LINE OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 12, ALSO BEING SAID EAST LINE OF THE LANDS AS DESCRIBED IN OFFICIAL RECORDS BOOK 5887, PAGE 5808 AND THE POINT OF TERMINATION OF THE HEREIN DESCRIBED CENTERLINE DESCRIPTION.

THE SIDE LINES OF SAID EIGHT (8) FOOT EASEMENT TO BE EXTENDED OR SHORTENED TO MEET AT ANGLE POINTS AND TO TERMINATE AT THE WEST LINE OF OFFICIAL RECORDS BOOK 0688, PAGE 0880, AND THE EAST LINE OF OFFICIAL RECORDS BOOK 5887, PAGE 5808. CONTAINING 0.148 ACRES, MORE OR LESS AND BEING SUBJECT TO ANY RESTRICTIONS, COVENANTS, EASEMENTS AND/OR RIGHTS-OF-WAY OF RECORD.

LEGEND

- CENTERLINE OF 8.00' WIDE INGRESS-EGRESS EASEMENT
LOT LINE
SECTION LINE
RIGHT OF WAY LINE
8.00' WIDE INGRESS-EGRESS EASEMENT TO BE ACQUIRED BY BREVARD COUNTY

SURVEYOR'S NOTES:

- 1. THIS SKETCH IS NOT A BOUNDARY SURVEY BUT ONLY A GRAPHICAL DEPICTION OF THE LANDS DESCRIBED HEREIN. SEE SHEETS 2 AND 3 OF 3 FOR SKETCHES.
2. BEARINGS ARE BASED ON GRID NORTH REFERENCED TO THE STATE PLANE COORDINATE SYSTEM FOR FLORIDA'S EAST ZONE 0901 NORTH AMERICAN DATUM OF 1983 AND READJUSTED IN 2011. NAD83(2011).
3. INSTRUMENTS OF RECORD PERTAINING TO ENCUMBRANCES SUCH AS EASEMENTS, RIGHTS OF WAY, COVENANTS, AGREEMENTS, AND RESTRICTIONS WERE NOT PROVIDED BY THE CLIENT; A SEARCH OF THE PUBLIC RECORDS WAS NOT PERFORMED BY THIS SURVEYOR. NO OPINION OF TITLE IS EXPRESSED OR IMPLIED HEREIN.

Susan G. Jackson (Signature)

SUSAN G. JACKSON, PSM NO. 4637
NOT VALID UNLESS SIGNED AND SEALED

PREPARED FOR: BREVARD COUNTY ENVIRONMENTALLY ENDANGERED LANDS (EEL) PROGRAM
EEL ACQUISITION PROGRAM COORDINATOR: JENNY ASHBURY

PREPARED BY: BREVARD COUNTY PUBLIC WORKS SURVEYING & MAPPING DIVISION

ADDRESS: 2725 JUDGE FRAN JAMIEBON WAY BUILDING A, SUITE A220 VIERA, FL 32940
PHONE: (321) 633-2080, FAX: (321) 633-2083, E-MAIL: susan.jackson@brevardcounty.us

Table with 4 columns: DRAWN BY (M. CORNELL), CHECKED BY (M. CAZESSUS & S. G. JACKSON), DRAWING NO. (13-02-022), SECTION (12); DATE (03-27-13), SHEET (1 OF 3), PROJ. FOLDER (1302022), TOWNSHIP (22 SOUTH); REVISIONS, RANGE (34 EAST)

# SKETCH OF DESCRIPTION

## SHEET 2 OF 3

THIS SKETCH IS NOT  
VALID WITHOUT SHEETS  
1 AND 3 OF 3

SECTION 12, TOWNSHIP 22 SOUTH, RANGE 34 EAST.

THIS IS NOT A SURVEY BUT ONLY A  
GRAPHIC DEPICTION OF THE LEGAL  
DESCRIPTION ON SHEET 1 OF 3.

OWNER: BREVARD COUNTY

TAX PARCEL ID:  
22-34-12-00-00001.0-0000.00  
ORB 5887, PAGE 5808

APPROXIMATE GRANT LINE

APPROXIMATE LOT  
LINE (TYPICAL)

NOTE:  
SEE SHEET 3 OF 3  
FOR EASEMENT DETAIL

SCALE:  
1" = 200'

OWNER: MODERN, INC.

TAX PARCEL ID:  
22-34-12-00-00501.0-0000.00  
ORB 3105, PAGE 0846

PUBLIC BOAT  
RAMP  
EASEMENT  
CCMB 40-274

POINT OF  
TERMINATION

POINT OF BEGINNING

CENTERLINE OF 8.00' WIDE  
INGRESS-EGRESS EASEMENT

8.00 FOOT WIDE  
INGRESS-EGRESS  
EASEMENT

FOX LAKE  
COUNTY PARK

OWNER: BREVARD COUNTY

SITE ADDRESS:  
4400 FOX LAKE ROAD PARK,  
TITUSVILLE 32796

TAX PARCEL ID:  
22-34-12-00-00502.0-0000.00

ORB 0688, PAGE 0860

POINT OF COMMENCEMENT

SOUTHEAST CORNER OF SOUTHWEST  
1/4 OF SECTION 12-22-34

OWNER: BREVARD COUNTY

TAX PARCEL ID:  
22-34-12-00-00001.0-0000.00  
ORB 5887, PAGE 5808

N00°44'32"W 1026.20'

EAST LINE OF SOUTHWEST  
1/4 OF SOUTHWEST 1/4 OF  
SECTION 12 AND EAST LINE  
OF ORB 5887, PAGE 5808

1250.00' (DEED)

N00°49'35"W 987.19'  
WEST LINE OF ORB  
0888, PAGE 0860  
(FOX LAKE PARK)

FOX LAKE  
ROAD

SOUTHWEST CORNER OF  
FOX LAKE PARK DESCRIBED  
IN OFFICIAL RECORDS BOOK  
0888, PAGE 0860

SOUTH LINE SECTION  
12 AND NORTH  
RIGHT OF WAY LINE

25' RIGHT OF WAY PER  
PLAT BOOK 2, PAGE 29

S88°57'36"W  
3450.00'  
(DEED)

LOT 19

SOUTH RIGHT  
OF WAY LINE  
LOT 20

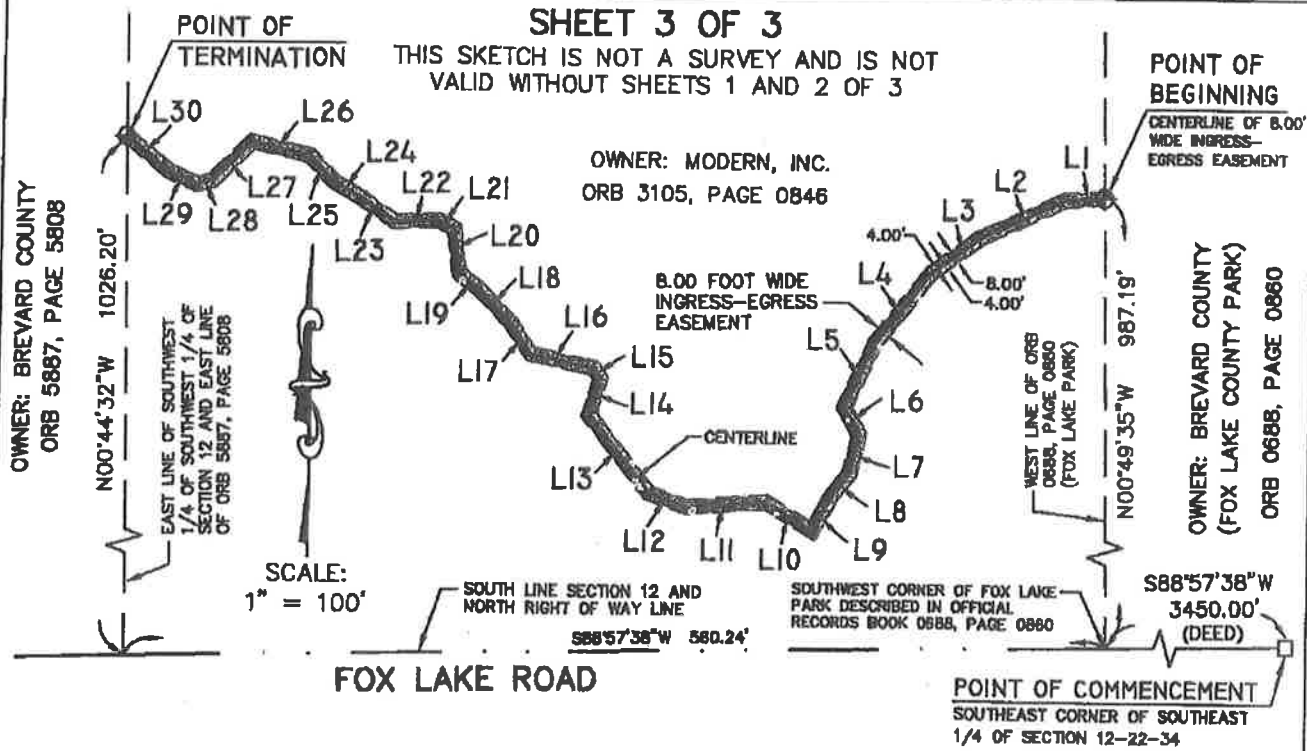
LOT 21

LOT 22  
TITUSVILLE FRUIT AND FARM LANDS COMPANY  
PLAT BOOK 2, PAGE 29

LOT 23

**SHEET 3 OF 3**

THIS SKETCH IS NOT A SURVEY AND IS NOT VALID WITHOUT SHEETS 1 AND 2 OF 3



L1	S87°05'40"W	21.58'
L2	S65°15'37"W	52.95'
L3	S54°06'29"W	35.25'
L4	S38°37'06"W	50.61'
L5	S25°21'25"W	40.13'
L6	S29°55'35"E	17.79'
L7	S13°37'11"W	23.13'
L8	S38°50'38"W	16.11'
L9	S28°05'15"W	22.54'
L10	N58°59'13"W	31.20'
L11	S86°00'10"W	45.47'
L12	N70°24'54"W	22.56'
L13	N38°20'42"W	56.15'
L14	N16°34'46"E	21.42'
L15	N33°04'23"W	7.05'

L16	N78°43'50"W	37.44'
L17	N33°38'57"W	20.25'
L18	N44°34'20"W	26.52'
L19	N53°20'37"W	15.18'
L20	N06°48'15"W	25.28'
L21	N62°51'06"W	10.33'
L22	S88°23'08"W	25.14'
L23	N56°00'49"W	22.78'
L24	N59°32'53"W	18.14'
L25	N43°49'13"W	20.34'
L26	N77°14'02"W	33.29'
L27	S45°06'09"W	31.24'
L28	S75°45'51"W	8.87'
L29	N65°41'22"W	17.95'
L30	N51°41'10"W	31.63'