

TRAIL ACCESS LEASE

THIS TRAIL ACCESS LEASE made this ____ day of _____, 20__, 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

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 and

WHEREAS, an amendment to the Trail Access Lease was entered into in 2017 (the "First Amendment to the Lease"), and 2018 (the "Second Amendment to the Lease"), which are 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 update names for Notices; and

WHEREAS, the Trail Access Lease expired on December 29, 2023, and both parties desire to extend the term for an additional five (5) years, through December 29, 2028,

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the Parties affirm the obligations under the Trail Access Lease are 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, 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, 2028, unless sooner terminated (the "Lease Term"). Should 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.

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 Certificate Holder, 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: Mary Ellen Donner, 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.

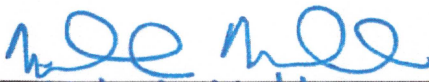
(Signatures begin on next page)

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: Michael Moehle
Its: President

"LESSEE"

**Brevard County Board of County
Commissioners**

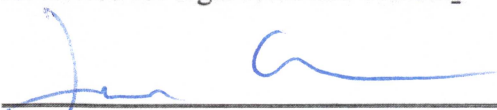
As approved by the Board on April 23, 2024

By: _____
Jason Steele, Chair
Brevard County Commission

Attest:

Rachel Sadoff, Clerk of Court

Reviewed for legal form and content:



Justin Caron, Assistant County Attorney
4/15/2024
Date

Exhibit A:
Map of Owner's Property and Location of Trail Lease

