

LEASE

DATE. October \_\_\_\_\_, 2022.

1. PARTIES. City of Hermiston ("CITY", "LANDLORD"), located at 1705 E Airport Rd, Hermiston, OR 97838, ("Landlord"), and Made to Thrive, a 501c3, Domestic Non-Profit Corporation, located at 295 E Main St. Ste 1-W, Hermiston, OR 97838 ("TENANT").

2. DESCRIPTION OF PROPERTY. Landlord leases to Tenant and Tenant leases from Landlord the 18 acre overflow parking area at EOTEC which will be named HEROS ("the Property" and "lease property") more fully described in Exhibit "A" attached hereto and by this reference incorporated herein.

3. TERM. This Lease shall commence on October \_\_\_\_, 2022, and end on October \_\_\_\_, 2027, being five (5) years in length. Tenant shall be entitled to possession on execution of this Lease. Renewal options of up to one (1) year are available should construction not be complete and mutually agreed to by the parties.

4. RENT.

BASIC RENT. Tenant shall pay rent in the form of Tenant's improvements to the Property, namely the construction of the HEROS Sportplex and other valuable improvements. During the term of this lease, Tenant shall pay a rent sum of ONE DOLLAR (\$1.00) per calendar year (or partial calendar year), payable no later than 10 days after the execution of the lease or renewal of said lease. At the termination of this Lease ownership of all improvements to the Property made by Tenant shall become the sole property of Landlord and Landlord shall have no obligation to reimburse Tenant for the cost of any improvements made by Tenant.

5. USE OF THE PROPERTY.

(a) PERMITTED USE. The Property shall be used by Tenant for construction of the 18 acre HEROS Sportsplex.

(b) RESTRICTIONS ON USE. In connection with the use of the Property, Tenant shall:

(1) Conform to all applicable laws and regulations of any public authority affecting the Property and the use, and correct at Tenant's own expenses any failure of compliance.

(2) Refrain from any use which would be reasonably offensive to the Landlord or owners and users of adjoining property or which would tend to create a nuisance or damage the reputation of the Property.

(3) Refrain from any development or construction activity that would prevent the Property from being used as overflow parking for the Umatilla County Fair and Rodeo and other large events held at the Eastern Oregon Trade and Event Center (EOTEC).

6. OPERATIONS AND LANDLORD'S OBLIGATIONS. Except for Tenant's construction activity, all other uses and activity upon the Property shall be under Landlord's control. Landlord shall have the following specific responsibilities and obligations:

- (a) GRASS FIELDS. The Hermiston Parks & Recreation Department will be responsible for maintaining and repairing the field once the grass is established even if construction is not complete. The Hermiston Parks & Recreation Department will keep the grass fields up to a ready to play standard which may include:
  - (1) Mowing as necessary to maintain a ready to play standard.
  - (2) Fertilizing as needed to maintain a ready to play standard.
  - (3) Painting field lines on fields as needed.
  - (4) Aerating, fertilizing and overseeding (if necessary) as needed including possibly directly following the Umatilla County Fair.
  - (5) Watering as needed to maintain a ready to play standard.
  - (6) Spraying weeds as needed to maintain a ready to play standard.
- (b) TURF CARE EQUIPMENT. Turf care equipment donated by Tenant will be properly maintained by the Hermiston Parks & Recreation Department up to the manufacturer's recommendations. All equipment will be exclusively used at the Property.
- (c) GOALS, NETS, AND PLAYING EQUIPMENT. All playing equipment will be stored and maintained in the best and most efficient manner.
- (d) BUILDING, LIGHT POLES AND PERMANENT STRUCTURES. The storage building, donor wall, field lights, irrigation pumps and variable speed drives shall be kept in good repair.
- (e) SCHEDULING. All field scheduling for tournaments and events will be conducted by the Hermiston Parks & Recreation department in close communication, coordination and cooperation with CITY Staff operating EOTEC.

7. PARKING FEE INCOME. For the term of this lease, Tenant shall receive 5% of all gross income derived from parking fees charged by landlord for events and use of the Property as a sportsplex. This does not include parking income for any other purpose, such as Umatilla County Fair and Rodeo events. Tenant intends to use these funds to offset Tenant's construction-related loan interest and administration costs. Landlord shall distribute Tenant's portion of the parking fee at least annually. After the expiration of the lease, all parking fees will remain with the CITY

8. INDEMNIFICATION. Tenant shall defend, indemnify and hold Landlord harmless from any and all claims, losses, liabilities, causes of action or causes of suit arising out of or related to any construction activity of Tenant on the leased property or any condition of the leased property which is not Landlord's responsibility under this lease. This includes but is not limited to claims made by users of the leased property, employees or neighboring landowners alleging damages caused by Tenant's operation, and includes any damages caused by materials escaping from the leased Property. Landlord shall defend, indemnify and hold Tenant harmless from any and all claims, losses, liabilities, causes of action or causes of suit arising out of or related to any activity or event held or scheduled by Landlord on the leased property or any condition of the leased property which is not Tenants responsibility under this lease.

9. TENANT INSURANCE. Tenant shall maintain during the term of this lease or any renewal of it, and continue to carry the following insurance at Tenant's cost:

- (a) Liability insurance and property damage insurance with limits of not less than One Million Dollars (\$1,000,000.00) for injury per occurrence, Two Million Dollars (\$2,000,000.00) aggregate.
- (b) Such insurance shall cover all risks arising directly or indirectly out of Tenant's activities on or any condition of the leased property, shall protect Tenant and shall protect Landlord and Tenant against claims of third persons.
- (c) Tenant shall be responsible for any fire insurance Tenant wishes to have on the improvements and assets.
- (d) Waiver of Subrogation. Neither party shall be liable to the other (or to the other's successors and assigns) for any loss or damage caused by fire or any of the risks enumerated in a standard fire insurance policy with an extended coverage endorsement, and in the event of insured loss, neither party's insurance company shall have a subrogated claim against the other.

10. LANDLORD INSURANCE. Landlord shall maintain during the term of this lease or any renewal of it, continue to carry the following insurance at Landlord's cost:

- (a) Liability insurance and property damage insurance with limits of not less than One Million Dollars (\$1,000,000.00) for injury per occurrence, Two Million Dollars (\$2,000,000.00) aggregate.
- (b) Such insurance shall cover all risks arising directly or indirectly out of Landlord's activities on or any condition of the Property, shall protect Landlord and shall protect Landlord and Tenant against claims of third persons.
- (c) Landlord shall be responsible for any fire insurance Landlord wishes to have on the improvements and assets transferred to Landlord from Tenant.
- (d) Waiver of Subrogation. Neither party shall be liable to the other (or to the other's successors and assigns) for any loss or damage caused by fire or any of the risks enumerated in a standard fire insurance policy with an extended coverage endorsement, and in the event of insured loss, neither party's insurance company shall have a subrogated claim against the other.

11. LIABILITY TO THE THIRD PERSONS. Except with respect to activities for which Landlord is responsible, Tenant shall pay as due all claims for work done on and for services rendered or material furnished to the leased Property and shall keep the Property free from any liens.

12. QUIET ENJOYMENT. Landlord warrants that Landlord is the owner of the leased Property and has the right to lease said Property free of all encumbrances, except any encumbrance of record.

13. ASSIGNMENT AND SUBLEASE. No part of the leased property or Tenant's operations on the leased property may be assigned, mortgaged or subleased, nor may a right of use of any portion of the Property be conferred on any third person by any other means without the prior written consent of Landlord. This provision shall apply, to the extent allowed by law, to all transfer by operation of law and transfers to and by trustees in bankruptcy, receivers, administrators, executives and legatees. No consent in one instance shall prevent the provision from applying to a subsequent instance. Any such assignment, mortgage or sublease or attempted assignment, mortgage or sublease without the prior

written consent of Landlord is void and, at the option of Landlord, is an act of default in addition to those listed below.

14. TENANT'S DEFAULT. The following shall be events of default:

- (a) Failure of Tenant to comply with any term or condition or fulfill any obligation of the lease within thirty (30) days after written notice by Landlord specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the 30-day period, this provision shall be complied with if Tenant begins correction of the default within the 30-day period and thereafter proceeds with diligence and in good faith to effect the remedy as soon as practicable.
- (b) Insolvency of Tenant; an assignment by Tenant for the benefit of creditors; the filing by Tenant of a voluntary petition in bankruptcy; an adjudication that Tenant is bankrupt or the appointment of a receiver of the properties of Tenant; the filing of an involuntary petition of bankruptcy and the failure of the Tenant to secure a dismissal of the petition within thirty (30) days after filing; attachment of or the levying of execution on the leasehold interest and failure of the Tenant to secure discharge of the attachment or release of the levy of execution within ten (10) days.

15. LANDLORD'S REMEDIES ON TENANT'S DEFAULT.

- (a) RIGHT TO CURE. If Tenant fails to perform any obligation under this lease, Landlord shall have the option to do so after thirty (30) days written notice to Tenant. All of Landlord's expenditures to correct the default shall be reimbursed by Tenant on demand with interest at the maximum rate allowed by law from the date of expenditure by Landlord.
- (b) TERMINATION. In the event of default, the lease may be terminated at the option of the Landlord by notice in writing to Tenant. The notice may be given before or within thirty (30) days after the running of the grace period for default. If the Property is abandoned by Tenant in connection with a default, termination shall be automatic and without notice.
- (c) DAMAGES. Whether or not this lease is terminated by election of Landlord or otherwise, Landlord shall be entitled to recover damages from Tenant for default. However, damages shall be limited to insurance proceeds and all improvements made to the Property by Tenant.
- (d) RE-ENTRY AFTER TERMINATION. If the lease is terminated for any reason the rights and obligations of the parties shall be as follows:
  - (1) Tenant shall vacate the Property immediately, remove any property which Tenant is required to remove under this lease and perform any clean up.
  - (2) Landlord may re-enter, take possession of the Property and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages.
- (e) REMEDIES CUMULATIVE. The foregoing remedies shall be in addition to and shall not exclude any other remedy available to Landlord under applicable law.

16. LANDLORD'S DEFAULT AND TENANT'S REMEDIES. Landlord shall be in default if it fails to cure any breach of this agreement within 30 days of written notice specifying in detail the nature of the breach. Upon a default by Landlord, Tenant shall be entitled to any and all remedies available under this agreement and Oregon law and equity.

17. REPRESENTATIONS. Tenant has inspected the Property and has independently determined that the Property is suitable for its purpose. Tenant accepts the leased property, and all aspects of it, in its present condition, AS IS, including latent defects, without any representations or warranties, expressed or implied by Landlord, including any warranties or merchantability or fitness for a particular purpose.

18. COMPLIANCE WITH LAW-WASTE. Tenant shall comply with all government rules and regulations related to the leased property and Tenant's use of the leased property. Tenant shall not commit or permit any waste or misuse of the leased property.

19. MISCELLANEOUS.

- (a) NON-WAIVER. Waiver by either party of strict performance of any provision of this lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.
- (b) ATTORNEY FEES. If suit or action or any appeal therefrom is instituted in connection with any controversy arising out of this lease, the parties shall be responsible to pay their own attorney fees and costs associated with any suit, action or appeal. Should any dispute arise between Landlord and Tenant under this Lease then exclusive venue shall lie in the Umatilla County Circuit Court in the State of Oregon.
- (c) INSPECTION OF PROPERTY. Landlord shall have the right to inspect the Property at any reasonable time or times.
- (d) SUCCESSION. Subject to the above-stated limitations on transfer of Tenant's interest, this lease shall be binding upon and ensure to the benefit of the parties, their respective successors and assigns.
- (e) TIME IS OF THE ESSENCE. The parties acknowledge and agree that time is of the essence with respect to all the terms, conditions and provisions of this lease.
- (f) CAPTION. The paragraph headings used herein are for convenience only and are not intended to broaden or limit the meaning of the terms used.
- (g) NOTICES. Any notice required or permitted under this lease shall be given when actually delivered or when deposited in the United States mail as certified mail addressed as follows:

LANDLORD: City of Hermiston  
Attn: Byron Smith, City Manager  
180 NE 2<sup>nd</sup> Street  
Hermiston, OR 97838

TENANT: Made to Thrive  
Attn: Kriss Dammeyer, Executive Director  
P.O. Box 684  
295 E. Main St. Ste 1-W

Hermiston, OR 97838

or to such other address as may be specified from time to time by either of the parties in writing.

20. ENTIRE AGREEMENT. This lease embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein; and this contract shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto. In addition, the parties specifically acknowledge and agree that the term of this lease is as set forth above and that no contract, lease or agreement exists between the parties concerning any extension, renewal, or additional lease term. The parties further agree that in the event the parties mutually agree to modify this lease in any way, said modification shall not be effective until reduced to writing and signed by both of the parties.

IN WITNESS WHEREOF, the parties have caused this Lease to be executed as of the date first written above.

<p>LANDLORD:</p> <p><b>City of Hermiston</b></p> <p>_____</p> <p>By: _____</p> <p>Its: _____</p>	<p>TENANT:</p> <p><b>Made to Thrive</b></p> <p>_____</p> <p>By: _____</p> <p>Its: _____</p>
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EXHIBIT A

DESCRIPTION OF LEASED PROPERTY

The land located at EOTEC known as the overflow parking area located on the portion of Real Property identified as *Tax Lot 1400 in the SW 1/4 of the SE 1/4 in Section 13 in Township 4 North Range 28 East of the Willamette Meridian, Umatilla County, State of Oregon.*

