

AGREEMENT TO BUY AND SELL REAL ESTATE

THIS AGREEMENT (“Agreement”) is made the 27th day of June, 2022, between the City of Pueblo, a Colorado municipal corporation (hereinafter called the “City”), and InhabX, LLC, a Colorado limited liability company (hereinafter called the “Company”). Company and City are sometimes referred to herein as a “Party” and collectively, as the “Parties.”

1. Property Defined. Subject to satisfaction of the terms and conditions contained in this Agreement, the City agrees to sell and convey to the Company and the Company agrees to purchase from the City, all that certain plat, piece, and unimproved parcels of land (the “Property”) described as follows:

Assessor Parcel Number
536320007
536306001

The Property shall be conveyed by Special Warranty Deed (“Deed”). The Property shall be conveyed subject to and subordinate to all easements, reservations, restrictions, covenants, limitations, rights-of-way and conditions of record and the zoning and subdivision regulations and resolutions of the City and the Permitted Exceptions (as hereinafter defined), which shall be listed as exceptions in Exhibit A to the Special Warranty Deed.

2. Purchase Price. City and Company agree that the total purchase price shall be as follows, to be paid as provided in, and subject to, Paragraph 7 below (the “Purchase Price”):

Assessor Parcel Number	Square Feet	Bid Amount
536320007	11,200	\$4,000.00
536306001	5,300	\$2,000.00

3. Payment of Purchase Price. The Purchase Price for the Property shall be paid at Closing (as hereinafter defined).

4. Title Commitment and Policy. No later than 10 days after the Effective Date, City shall order and obtain, and deliver to Company , at City’s expense, a current commitment for extended coverage title insurance in the amount of Fifty Thousand Dollars (\$50,000.00) together with legible copies of all documents listed as exceptions therein, and a current certificate of taxes due with respect to the Property, from a title company selected by City, and reasonably acceptable to Company, authorized to issue title insurance in the state of Colorado (the “Title Company”) on the current standard form of extended ALTA Owners Policy (collectively, the “Title Commitment”). The Title Company shall promptly provide copies of any amendments or modifications of the Title Commitment to Company. Company shall have the right to review the Title Commitment and the title documents and notify City in writing of any title objections to the title exceptions set forth in the Title Commitment. City shall have five (5) days from receipt of notice of such objections within which to eliminate or modify (or agree in writing to so eliminate or modify) any such unacceptable

exceptions or items to the reasonable satisfaction of Company, but City shall have no obligation whatsoever to so eliminate or modify any such unacceptable exceptions or items. In the event that City is unable or unwilling to eliminate or modify (or agree in writing to so eliminate or modify) such unacceptable items to the reasonable satisfaction of Company on or before the expiration of said five (5) day period, City shall notify Company in writing of such fact within said five (5) day period or be deemed to have so notified Company with respect to all such unacceptable items not theretofore cured upon the fifth (5th) day of said period. In such event, Company shall, prior to the Closing Date either (i) waive such objections and accept title to the Property subject to title exceptions set forth in the Title Commitment to which Company did not object and to such unacceptable items (the "Permitted Exceptions"), or (ii) terminate this Agreement by written notice to City, whereupon this Agreement shall automatically be terminated and of no further force and effect, except as otherwise expressly set forth herein. At Closing or as soon as reasonably practicable after Closing, the Title Company shall issue and deliver to Company the owner's title insurance policy referred to above (the "Title Policy"), issued by the Title Company insuring Company's title to the Property consistent with the Title Commitment subject only to taxes and assessments for the year of Closing and subsequent years and the Permitted Exceptions. At Closing, City shall pay the premium for the Title Policy. Company may obtain such other endorsements to the Title Policy as Company desires, at the expense of Company, except for endorsements obtained at City's cost. City shall provide such affidavits or certificates, and pay such expenses, as may be required by the Title Company to remove all liens, including, without limitation, mechanics' or materialmen's liens, as exceptions to the Title Policy.

5. Transfer of Title. Subject to payment of the Purchase Price, compliance by Company with the other terms and provisions hereof, City shall execute and deliver to Company at Closing a Special Warranty Deed conveying marketable fee title to the Property to Company free of financing, mortgage, judgment and tax liens, subject to taxes and assessments for the year of Closing and subsequent years, subject to and subordinate to all easements, reservations, restrictions, covenants, limitations, rights-of-way and conditions of record and zoning and subdivision regulations and resolutions of the City of Pueblo and subject to the Permitted Exceptions which shall include all matters shown on the Title Commitment accepted by Company.

6. Closing Time and Place. Closing of the transaction contemplated hereby ("Closing") shall be held on a date and time as agreed by City and Company. The Closing shall take place in the offices of the Title Company issuing the Title Commitment and the Title Policy.

7. Conditions Precedent to Closing. The sale and purchase contemplated by this Agreement is contingent upon the full completion of the Company's performance under that certain Contract to Buy and Sell Real Estate between the Parties of even date herewith, by Company conveying the following real property to the City:

Assessor Parcel Number	Seller	Buyer
536208004	Company	City

8. Closing Costs, Documents and Services. Company and City shall sign and complete all customary or required documents at or before Closing. Fees for real estate closing services, if any, shall be paid at Closing, one-half by Company and one-half by City.

9. Prorations. General taxes and assessments for the year of Closing, if any (which shall be based on the taxes for the calendar year immediately preceding Closing), water, sewer, utility charges and other usual and customary items shall be prorated between City and Company as of the Closing Date.

10. Possession. Possession of the Property shall be delivered to Company by City on the Closing Date.

11. Time of Essence/Default and Remedies. Time is of the essence hereof. If any obligation required to be performed prior to Closing (and including the obligation to close) is not performed there shall be the following exclusive remedies:

(a) If Company is in Default: In the event Company defaults in the performance of its obligations hereunder, City shall have the right to (i) terminate this Agreement upon written notice to Company or (ii) treat this Agreement as being in full force and effect and to obtain specific performance, but not damages. Such violations may be restrained or such obligations enforced by injunction at the instance and request of Company without the showing of any special damages or an inadequate remedy at law.

(b) If City is in Default: In the event City defaults in the performance of its obligations hereunder, Company shall have the right to (i) terminate this Agreement by written notice to City or (ii) treat this Agreement as being in full force and effect and to obtain specific performance, but not any damages. Such violations may be restrained or such obligations enforced by injunction at the instance and request of Company without the showing of any special damages or an inadequate remedy at law.

(c) Costs and Attorneys' Fees. Anything to the contrary herein notwithstanding, in the event of any action or litigation arising out of this Agreement, the court shall award to the prevailing party all reasonable costs and expenses, including reasonable attorneys' fees.

12. Representations and Warranties of City. The City represents and warrants to Company as follows:

(a) City has full power, capacity and authority to execute and deliver this Agreement and all other documents required to be executed and delivered by City under this Agreement and to perform its obligations hereunder.

(b) This Agreement has been, duly authorized, executed and delivered by City and constitutes the legal, valid and binding obligation of City, enforceable against City in accordance with its terms.

(c) City is not a party to any judicial, administrative, arbitration or other similar proceedings relating in any manner to the Property or to City's interest therein or that may detrimentally affect City's ability to perform its obligations under this Agreement or the ability of persons who acquire portions of the Property to develop, own or operate the Property. City has not received notice of (and to City's knowledge there is no basis for) any pending or threatened claims, actions, suits or other proceedings of the nature described in the immediately preceding sentence, nor are any such claims, actions, suits or other proceedings anticipated by City.

(d) To City's knowledge, there are no violations of laws, rules, regulations, ordinances, codes, covenants, conditions, restrictions or agreements applicable to the Property. City has not received notice from any governmental or other agency or any other person with respect to any such violations concerning the Property.

(e) There are no Agreements or other obligations outstanding for the sale, lease or transfer of all or any part of the Property.

(f) There is no default, nor has any event occurred which, with the passage of time, the giving of notice or both, would constitute a default under any agreement, contract, mortgage, deed of trust or other instrument which relates to City's interest in the Property, to the Property itself, or which affects the Property in any manner that would have a material adverse effect on the Company.

(g) To the best of City's information, knowledge and belief: (i) the Property is in compliance with all applicable state and federal environmental laws, regulations, ordinances, rules and orders (collectively, "Environmental Laws"); (ii) there are no pending or threatened judicial or administrative proceedings of any kind with respect to the Property alleging the violation or potential violation of any Environmental Law nor any pending or threatened investigations of any matters relating to any Environmental Laws with respect to the Property; (iii) there exists no release or threatened release of any hazardous, toxic or otherwise regulated substance, waste, contaminant or material (collectively "Hazardous Materials"), as such terms are defined in any applicable Environmental Law, on, in or at the Property, or any part thereof; (iv) the Property has not been used as a dump site, a storage site for solid wastes or the location of above ground or underground fuel or storage tanks; and (v) that Hazardous Materials are not currently present on or have at any time been stored or used on the Property in violation of any Environmental Laws.

13. Representations and Warranties of Company. Company represents, warrants and covenants as follows:

(a) Company has full power, capacity and authority to execute and deliver this Agreement and all other documents required to be executed and delivered by Company under this Agreement and to perform its obligations hereunder.

(b) This Agreement will have been duly authorized, executed and delivered by Company and constitutes the legal, valid and binding obligation of Company, enforceable against Company in accordance with its terms.

14. Notices. Any notice required or permitted to be given or delivered under this Agreement shall be in writing and shall be given by personal delivery, or by the United States Postal Service, by registered or certified mail, postage prepaid, or reputable national overnight courier service:

(a) If to City, addressed to:

Mayor
City of Pueblo

1 City Hall Place, 2nd Floor
Pueblo, Colorado 81003

with a copy to: City Attorney
1 City Hall Place, 3rd Floor
Pueblo, Colorado 81003

(b) If to Company, addressed to:

InhabX, LLC
Attn: John Wark
2311 S. Prairie Ave.
Pueblo, CO 81005

or to such other address or person as any party may from time to time specify in a writing delivered to the other party in the manner provided in this paragraph. Any notice shall be deemed delivered on the day on which personal delivery is effected or three (3) days after deposit in the mail in the case of registered or certified mail, and one (1) business day after delivery in the case of overnight courier.

15. Assignment. This Agreement and the rights granted to Company hereunder may be assigned as follows:

15.1. Internal Assignments. Notwithstanding anything in this Agreement to the contrary, Company has the right to assign this Agreement, without City's consent, to a parent, subsidiary, or affiliate of Company, to a company that has been merged or consolidated with Company, or to a company acquiring all or substantially all of Company's physical assets, provided Company (or the resulting entity of any merger or consolidation) remains fully liable hereunder.

15.2. Outside Assignment Requirements. It shall be necessary for Company to obtain City's prior, written consent to any other proposed assignment of this Agreement. However, City's consent must not be unreasonably or unduly withheld, conditioned, or delayed, provided, however, that City may withhold consent thereto if in the exercise of its sole judgment it determines that:

15.2.1. Financial Condition. The financial condition of the proposed assignee is not consistent with the extent of the obligations undertaken by the proposed assignment.

Except as so restricted, this Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

16. Modification. No subsequent modification of any of the terms of this Agreement shall be valid or binding upon the Parties or enforceable unless made in writing and signed by the Parties.

17. Entire Agreement. All understandings and agreements heretofore had between the Parties hereto considering the subject matter hereof are merged into this Agreement and the that certain Contract to Buy and Sell Real Estate between the Parties of even date herewith (identified in Section 7 *supra*.) which alone fully and completely express the agreement and

understanding of the Parties with respect to the Property. Said agreements are entered into after full investigation, neither Party relying upon any statement or representation, not embodied in this Agreement or the aforesaid other agreements, made by the other Party.

18. Captions. The captions in this Agreement are inserted for convenience of reference only and in no way define, describe or limit the scope or intent of this Agreement or any of the provisions hereof.

19. Validity. If any provision of this Agreement shall be held to be invalid or unenforceable, the same shall not affect in any respect whatsoever the validity or enforceability of the remainder of this Agreement.

20. Broker. Company and City represent and warrant to each other that no broker or finder has been engaged by such Party in connection with this transaction. City agrees to indemnify, defend and hold Company harmless from and against any and all claims, loss, liability, costs and expenses (including reasonable attorneys' fees), resulting from any claims that may be made against Company by any broker or other person claiming a commission, fee or other compensation by reason of the transaction contemplated hereby if the same shall arise by, through or on account of City. Company agrees to indemnify, defend and hold City harmless from and against any and all claims, loss, liability, costs and expenses (including reasonable attorneys' fees), resulting from any claims that may be made against City by any broker or other person claiming a commission, fee or other compensation by reason of the transaction contemplated hereby if the same shall arise by, through or on account of Company .

21. Applicable Law. This Agreement will be construed and enforced in accordance with the laws of the State of Colorado (without giving effect to its choice of law principles).

22. Interpretation. Whenever the context so requires, the singular number shall include the plural and the plural the singular, and the use of any gender shall include all genders. In addition, the Parties acknowledge that the Parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or amendments hereto.

23 Survival of Representations. The representations, warranties, covenants and agreements of Company and City in this Agreement are and shall be construed to be covenants running with the Property, shall survive the Closing of the transaction contemplated hereby and recordation of the Special Warranty Deed and may be enforced by either Company or City after Closing Date and shall not be merged or be deemed to be merged into the Special Warranty Deed.

24. Third Parties. Company and City and their respective successors and permitted assigns are the only parties to this Agreement and are the only parties entitled to enforce this Agreement. Nothing contained in this Agreement nor any provision hereof is intended to give or shall be construed to give or confer, directly or indirectly, or otherwise, upon any third party any right, remedy or benefit hereunder.

25. Disclaimers. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, IT IS UNDERSTOOD AND AGREED THAT CITY IS NOT MAKING AND HAS NOT AT ANY TIME

MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR REPRESENTATIONS AS TO HABITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE (OTHER THAN CITY'S SPECIAL WARRANTY OF TITLE TO BE SET FORTH IN THE SPECIAL WARRANTY DEED), ZONING, TAX CONSEQUENCES, PHYSICAL OR ENVIRONMENTAL CONDITION (INCLUDING, BUT NOT LIMITED TO, HAZARDOUS MATERIALS CONTAMINATION), UTILITIES, OPERATING HISTORY OR PROJECTIONS, VALUATION, GOVERNMENTAL APPROVALS, THE COMPLIANCE OF THE PROPERTY WITH GOVERNMENTAL LAWS, OR ANY OTHER MATTER OR THING REGARDING THE PROPERTY. COMPANY ACKNOWLEDGES AND AGREES THAT, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT AND THE SPECIAL WARRANTY OF TITLE TO BE SET FORTH IN THE SPECIAL WARRANTY DEED, UPON CLOSING CITY SHALL SELL AND CONVEY TO COMPANY AND COMPANY SHALL ACCEPT THE PROPERTY "AS IS, WHERE IS, WITH ALL FAULTS." COMPANY AND CITY AGREE THAT THE PROVISIONS OF THIS PARAGRAPH 25 SHALL SURVIVE THE CLOSING OF THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT AND THE RECORDING OF THE SPECIAL WARRANTY DEED HEREUNDER.

26. Venue and Waiver of Trial by Jury. CITY AND COMPANY HEREBY IRREVOCABLY SUBMIT TO THE PERSONAL AND SUBJECT MATTER JURISDICTION OF THE DISTRICT COURT, PUEBLO COUNTY, STATE OF COLORADO IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT AND HEREBY IRREVOCABLY AGREE THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING SHALL BE HEARD AND DETERMINED IN THE DISTRICT COURT OF PUEBLO COUNTY, STATE OF COLORADO. COMPANY AND CITY AGREE THAT THE PROVISIONS OF THIS PARAGRAPH 26 SHALL SURVIVE THE CLOSING OF THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT AND THE RECORDING OF THE SPECIAL WARRANTY DEED HEREUNDER. TO THE FULL EXTENT PERMITTED BY LAW, COMPANY AND CITY WAIVE THEIR RIGHTS TO A TRIAL BY JURY.

27. Waiver. The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

28. Recording. Neither Party shall record this Agreement or any short form memorandum of this Agreement.

29. Limitations on Liability. NEITHER PARTY SHALL BE LIABLE FOR ANY ACTUAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, SPECIAL, EXEMPLARY OR INDIRECT DAMAGES (INCLUDING LOSS OF PROFITS) ARISING OUT OF A BREACH OF THIS AGREEMENT. IN THE EVENT OF A BREACH OF THIS AGREEMENT, THE SOLE REMEDY AVAILABLE TO THE NON-BREACHING PARTY SHALL BE LIMITED TO SPECIFIC PERFORMANCE.

30. Counterparts. This Agreement may be executed in any number of counterparts, and each such counterpart shall be deemed for all purposes to be an original, and all such counterparts shall together constitute but one and the same original.

Executed at Pueblo, Colorado, the day and year first above written.

CITY:

CITY OF PUEBLO, CO
A MUNICIPAL CORPORATION

By: _____
Mayor

ATTESTED BY: _____
City Clerk

COMPANY:

InhabX, LLC
A Colorado limited liability company

By: (Signature)
John Wark
President and Manager