

CONTRACT TO BUY AND SELL REAL ESTATE

This Contract to Buy and Sell Real Estate (“Agreement”) is made and entered into this 27th day of June, 2022 by and between the City of Pueblo, a Colorado municipal corporation (hereinafter “Buyer”) and InhabX, LLC, a Colorado limited liability company (hereinafter “Seller”). Buyer and Seller are sometimes referred to herein as a “Party” and collectively, as the “Parties.”

1. Property Defined. Seller agrees to sell and convey to the Buyer and the Buyer agrees to purchase from Seller, that certain plat, piece, and parcel of land having the following legal description:

Assessor Parcel Number
536208004

County of Pueblo, State of Colorado (the “Property”). The Property shall be conveyed by Special Warranty Deed (“Deed”) subject to the zoning and subdivision regulations and resolutions of the City of Pueblo and the Permitted Exceptions (as hereinafter defined).

2. Purchase Price and Terms. The Purchase Price for the Property shall be Ten Dollars (\$10.00) payable at Closing (as hereinafter defined).

3. Evidence of Title.

(a) Title Commitment and Policy. Prior to the Closing Date (as defined in Paragraph 5 below) Seller shall order and obtain, at Seller’s expense, a current commitment for extended coverage title insurance in the amount of \$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 Buyer and reasonably acceptable to Seller 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 Buyer and Seller. At Closing or as soon as reasonably practicable after Closing, the Title Company shall issue and deliver to Buyer the owner’s title insurance policy referred to above (the “Title Policy”), issued by the Title Company insuring Buyer’s title to the Property consistent with the Title Commitment and subject only to taxes and assessments for the year of Closing and subsequent years. At Closing, Seller shall pay the premium for the Title Policy. Buyer may obtain such other endorsements to the Title Policy as Buyer desires, at the expense of Buyer. Seller shall provide such affidavits or certificates 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.

(b) Title Defects and Objections. Buyer will have twenty (20) days from the date of receipt of the Title Commitment, whichever shall last occur, but in no event later than the expiration of the Inspection Period (as defined in Paragraph 4 below), to notify Seller in writing of any objections to any items identified in the Title Commitment, or of any other objections as to title matters. Seller will have until fifteen (15) days after receipt of Buyer’s written objections (“Seller’s Cure Period”) to elect, at its reasonable discretion, to cure all items to which Buyer has objected, cause such items to be modified in a manner which is reasonably satisfactory to Buyer or to advise Buyer that Seller does not intend to cure such items. Alternatively, within the Seller’s Cure Period, Buyer at Buyer’s cost may elect to obtain one or more endorsements to the Title

Commitment, in a form reasonably acceptable to Buyer, providing title insurance protection with regard to any objections raised by Buyer. If Seller fails to cure to the reasonable satisfaction of Buyer any written objection by Buyer of which Seller has been given notice in accordance with this subparagraph (b), or elects not to cure, then Buyer may elect, as its sole remedy to either (i) waive the objection by written notice to Seller within ten (10) days after expiration of Seller's Cure Period and proceed to Closing as herein provided, or (ii) terminate this Agreement by written notice to Seller, in which case the Parties will be released from all obligations hereunder, except for any obligations that expressly survive the termination of this Agreement. Buyer shall have ten (10) business days after receipt of any amendment or update to the Title Commitment to object to any changes in the same fashion as objections to the initial Title Commitment under this subparagraph (b). Anything above to the contrary notwithstanding, Seller shall be obligated to, and shall cause all financing, mortgage, judgment and tax liens to be removed as title exceptions prior to or concurrently with Closing.

4. Inspection. Commencing on the Effective Date and continuing for Thirty (30) days thereafter (the "Inspection Period"), Buyer, its agents, consultants and employees, shall have the right to enter and access the Property at reasonable times and upon reasonable advance notice for the purpose of making such inspections, studies, tests and investigations ("Testing") as Buyer may elect and which it deems necessary to determine the suitability of the Property for Buyer's intended use. All such Testing shall be performed by Buyer or its agents or employees at Buyer's sole cost and expense. Buyer shall indemnify, defend and hold Seller and the Property harmless from and against any and all direct costs, liabilities, claims, demands, actions and expenses arising from or in connection with such Testing and, in the event Buyer does not close on the purchase of the Property, Buyer shall repair any damage to the Property or improvements thereon caused by such Testing. This indemnification shall not be deemed to apply to costs, liabilities, claims, demands, actions or expenses arising from Seller's negligent acts or omissions or any pre-existing condition (including, without limitation, environmental conditions) within the Property. If Buyer is not satisfied with the physical condition of the Property, Buyer may terminate this Agreement by written notice given to Seller prior to the expiration of the Inspection Period.

5. Date of Closing. The closing of Buyer's purchase of the Property ("Closing") shall take place within Sixty (60) days after the Effective Date of this Agreement or at an earlier date as mutually agreed to by the Parties ("Closing Date") and the hour and place of Closing shall be mutually agreed upon by the Parties.

6. Transfer of Title. Subject to payment of the Purchase Price, compliance by Buyer with the other terms and provisions hereof, and the occurrence or waiver by Buyer of the Conditions Precedent to Closing defined and described in Paragraph 7, Seller shall execute and deliver to Buyer at Closing a Special Warranty Deed conveying marketable fee simple title to the Property to Buyer free of financing, mortgage, judgment and tax liens, subject only to the Permitted Exceptions which shall include all matters shown on the Title Commitment accepted by Buyer.

7. Additional Conditions Precedent to Closing. The sale and purchase contemplated by this Agreement is contingent upon occurrence of all the following prior to Closing Date (collectively, the "Conditions Precedent to Closing"):

- (a) City Council of Buyer, as its governing body, approving this Agreement on

or before Closing.

(b) The results of inspection and testing do not indicate any conditions which are deemed unacceptable to Buyer, in Buyer's sole and absolute discretion.

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

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

In the event any of the Conditions Precedent to Closing are not satisfied on or before five (5) days before the Closing Date, Buyer may by notice given to Seller not less than least five (5) days prior to Closing Date that Buyer will (i) waive any or all of the above conditions in writing delivered to Seller and close the sale and purchase of the Property, or (ii) elect to terminate this Agreement, in which event each party will be released from all obligations under this Agreement.

8. Closing Costs, Documents and Services. Buyer and Seller 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 Seller and one-half by Buyer.

9. Prorations. Estimated 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) shall be prorated and paid by Seller on the Closing Date.

10. Possession. Possession of all portions of the Property shall be delivered to the Buyer as of 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 Buyer is in Default: In the event Buyer defaults in the performance of its obligations hereunder, Seller shall have the right to (i) terminate this Agreement by written notice to Buyer 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, without the posting of a bond, at the instance and request of Seller without the showing of any special damages or an inadequate remedy at law.

(b) If Seller is in Default: In the event Seller defaults in the performance of its obligations hereunder, Buyer shall have the right to (i) terminate this Agreement by written notice to Seller 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, without the posting of a bond, at the instance and request of Buyer 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. Exclusive venue and jurisdiction for any such litigation shall be in the District Court in and for Pueblo County, Colorado and to the maximum extent permitted by law, Buyer and Seller hereby waive their right to a trial by jury. The provisions of this subparagraph (c) shall survive Closing or termination of this Agreement.

12. Representations and Warranties of Seller. Seller represents and warrants to Buyer as follows:

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

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

(c) Seller is not a party to any judicial, administrative, arbitration or other similar proceedings relating in any manner to the Property or to Seller's interest therein or that may detrimentally affect Seller'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. Seller has not received notice of (and to Seller'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 Seller.

(d) To Seller's knowledge, there are no violations of laws, rules, regulations, ordinances, codes, covenants, conditions, restrictions or agreements applicable to the Property. Seller 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 Seller'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 Buyer.

(g) To the best of Seller'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 Buyer. Buyer represents, warrants and covenants as follows:

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

(b) Subject to approval by Buyer's City Council, this Agreement will have been duly authorized, executed and delivered by Buyer and constitutes the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms.

14. Seller Covenants. Commencing on the Effective Date and until the first to occur of Closing or termination of this Agreement, Seller shall not (a) lease, sell, convey or further encumber any portion of the Property, (b) consent to any zoning or other change affecting the use of the Property, except for those requested or approved by Buyer, or (c) cause any other changes which affect the condition of Seller's title to the Property or would otherwise be reasonably likely to adversely impact the condition of the Property or Buyer's intended use thereof.

15. 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 Buyer, addressed to:

Mayor
1 City Hall Place, 2nd Floor
Pueblo, CO 81003

with a copy to:

City Attorney
1 City Hall Place, 3rd Floor
Pueblo, CO 81003

(b) If to Seller, 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 deposit in the case of overnight courier.

16. Assignment. This Agreement and the rights granted to Buyer hereunder may not be assigned by Seller without Buyer's express, written consent, which consent may be withheld in the sole and absolute discretion of Buyer. Except as so restricted, this Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and assigns.

17. 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.

18. Entire Agreement. This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof, and any prior statements, representations or agreements pertaining thereto, whether oral or written, have been merged and integrated into this Agreement.

19. 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.

20. 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.

21. Broker. Buyer and Seller represent and warrant that they shall each pay their respective brokers or real estate agents, if any, in connection with this transaction. Seller agrees to indemnify, defend and hold Buyer 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 Buyer 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 Seller. Buyer agrees to indemnify, defend and hold Seller 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 Seller 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 Buyer.

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

23. 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.

24. Survival of Representations. The representations, warranties, covenants and agreements of Buyer and Seller 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, may be enforced by either Buyer or Seller after Closing Date, and shall not be merged or be deemed to be merged into the Special Warranty Deed.

25. Third Parties. Buyer and Seller 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.

26. Counterparts and Facsimile Signatures. This Agreement may be executed in multiple counterparts, which taken together shall be deemed one original.

27. Exclusivity. In consideration of the time and resources which the Buyer will devote to the transactions contemplated herein, Seller agrees that for a period of One Hundred Fifty (150) after the effective date of this Agreement or the earlier termination of this Agreement, Seller will not, directly or indirectly, solicit, initiate or enter into discussions or transactions with, or encourage, or provide any information to, any individual, entity or group (other than to Buyer and Buyer's designees) concerning any sale or lease of the Property or any similar transaction or alternative. The provisions of this Paragraph shall not be construed to prohibit Seller or Buyer from discussing the transaction contemplated herein with their attorneys or other consultants.

28. Disclaimers. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, IT IS UNDERSTOOD AND AGREED THAT SELLER 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 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. BUYER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT UPON CLOSING SELLER SHALL SELL AND CONVEY TO BUYER AND BUYER SHALL ACCEPT THE PROPERTY "AS IS, WHERE IS, WITH ALL FAULTS." SELLER AND BUYER AGREE THAT THE PROVISIONS OF THIS PARAGRAPH 28 SHALL SURVIVE THE CLOSING OF THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT AND THE RECORDING OF THE DEED HEREUNDER.

29. Venue and Waiver of Trial by Jury. BUYER AND SELLER 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. BUYER AND SELLER AGREE THAT THE PROVISIONS OF THIS PARAGRAPH 29 SHALL SURVIVE THE CLOSING OF THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT. TO THE FULL EXTENT PERMITTED BY LAW, BUYER AND SELLER WAIVE THEIR RIGHTS TO A TRIAL BY JURY.

30 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.

Executed at Pueblo, CO as of the day and year first above written.

BUYER:

CITY OF PUEBLO, COLORADO
a Colorado municipal corporation

By: _____
MAYOR

ATTESTED BY: _____
CITY CLERK

SELLER:

InhabX, LLC
A Colorado limited liability company

By: (Signature)
John Wark
President and Manager