

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (“Agreement”) is made and entered into this 26th day of September, 2022 (“Effective Date”) by and between the City of Pueblo, a Colorado municipal corporation (“City”) and inhabX, LLC, a Colorado limited liability company (“Developer”). City and Developer are sometimes each referred to as a “Party” and collectively “Parties.” WITNESSETH:

WHEREAS, Developer is the owner of the following real property located adjacent to S. Main Street in the City of Pueblo, having the following legal description:

A portion of Lot 10, and all of Lots 11 through 20, Block 214, of The Colorado Coal and Iron Company, a subdivision of a certain portion of the City of South Pueblo, recorded December 6, 1883, in Book 40, Page 522 in the County of Pueblo, State of Colorado.

also known as Parcel No. 536305003 in the records of the Pueblo County Assessor (outlined with a red border in the attached Exhibit 1) (“Main Street Property”); and

WHEREAS, Developer acquired the Main Street Property from the Pueblo Conservancy District, a political subdivision of the State of Colorado (“District”) pursuant to a Quit Claim Deed dated December 15, 2021 which was recorded in the records of the Pueblo County Clerk and Recorder on December 20, 2021 at Reception No. 2257075; and

WHEREAS, in the aforesaid Quit Claim Deed, the District reserved a reversionary interest in the Main Street Property in the event that the Developer failed to provide the City “such easements or deeds as are necessary for the placement of the proposed Main Street [Pedestrian] Bridge abutments” across the Main Street Property; and

WHEREAS, Developer desires that the District’s reversionary interest specified in the December 15, 2021 Quit Claim Deed be extinguished and terminated; and

WHEREAS, the City is the owner of real property adjacent to the Main Street Property, (highlighted in green in the attached Exhibit 1); and

WHEREAS, the City wishes to construct the Main Street Pedestrian Bridge (highlighted in brown in the attached Exhibit 1) and also wishes to construct a concrete trail, fifty (50) feet in width, between S. Main Street and the new pedestrian bridge (highlighted in gray in the attached Exhibit 1) and the City requires temporary and permanent easements and rights-of-way from the Developer for such purposes; and

WHEREAS, the Parties desire to enter into an agreement specifying their respective rights and responsibilities with respect to the Main Street Property, in accordance with the terms herein provided;

NOW, THEREFORE, in consideration of the foregoing recitals and terms and conditions set forth herein and other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, the Parties agree as follows:

1. RESPONSIBILITIES OF THE DEVELOPER

- (a) Upon execution of this Agreement, Developer shall execute and deliver to the City the Temporary Easement and Right-of-Way document, marked as Exhibit 2, attached hereto and incorporated herein by this reference, thereby granting City a one-year easement and right-of-way to the entirety of the Main Street Property (“Temporary Easement”).
- (b) During the one-year term of the Temporary Easement, Developer shall cause the Main Street Property to be surveyed by a surveyor who is licensed by the State of Colorado. Such survey shall specify the location of:
 - (i) the concrete trail (50 feet in width) across the Main Street Property;
 - (ii) a strip of land (50’ by 80’) located in the northwest portion of Main Street Property adjacent to the City’s property (highlighted in green in the attached Exhibit A) and S. Main Street;
 - (iii) a strip of land (50’ by 50’) located in the southeast portion of the Main Street Property;
 - (iv) a strip of land (20’ by 20’) located northwest and adjacent to the strip of land described in Section 1 (b) (iii) above(hereinafter collectively the Permanent Easement).
- (c) Following completion of the survey described in Section 1 (b) above, but prior to the expiration of the term of the Temporary Easement, Developer shall grant and convey to the City, a dedicated Permanent Easement and Right-of-Way across the Main Street Property to the land described in Section 1 (b) (i) through (iv) above.
- (d) Consistent with the December 15, 2021 Quit Claim Deed, Developer shall grant and convey the Temporary Easement and Permanent Easement described herein to the City without receiving any financial compensation from the City.

2. RESPONSIBILITIES OF THE CITY

- (a) Upon execution of this Agreement, City shall notify the District that the Developer has provided or agreed to provide the City with the necessary temporary and permanent easements across the Main Street Property to construct and operate Main Street pedestrian bridge and that the City consents to the termination of the District’s reversionary interest specified in the December 15, 2021 Quit Claim Deed.
- (b) During the term of the Temporary Easement, City shall use best efforts to complete the installation of the Main Street Pedestrian Bridge (highlighted in brown in the attached Exhibit 1).

3. ASSIGNABILITY

This Agreement shall not be assigned or transferred by the Developer without the prior written consent of the City. Any assignment or attempted assignment made in violation of this provision shall, at the City's election, be deemed void and of no effect whatsoever.

4. ENTIRE AGREEMENT; AMENDMENTS

The provisions set forth in this Agreement, and all Exhibits and attachments to this Agreement, constitute the entire and complete agreement of the Parties hereto and supersede all prior written and oral agreements, understandings or representations related thereto. No amendment or modification of this Agreement, and no waiver of any provisions of this Agreement shall be binding unless made in writing and executed by the duly authorized officers of the Parties.

5. NO WAIVER OF GOVERNMENTAL IMMUNITY ACT

The Parties hereto understand and agree that the City and its Mayor, councilors, officials, officers, directors, agents, and employees, are relying on, and do not waive or intend to waive by any provisions of this Agreement, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, § 24-10-101 to 120, C.R.S., or otherwise available.

6. NO THIRD-PARTY BENEFICIARIES.

It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement shall be strictly reserved to the Parties and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third party. It is the express intention of the Parties that any person other than the Parties receiving services or benefits under the Agreement shall be deemed an incidental beneficiary only.

7. LITIGATION, VENUE AND WAIVER OF TRIAL BY JURY.

In the event of any litigation arising under this Agreement, the court shall award to the prevailing Party its costs and reasonable attorney fees. Exclusive venue for any such litigation shall be Pueblo County, Colorado. All such litigation shall be filed in the District Court, County of Pueblo, State of Colorado, and each Party submits to the personal and subject matter jurisdiction of such District Court. To the fullest extent permitted by law, the Parties hereby waive their right to a trial by jury.

8. SEVERABILITY.

If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall nonetheless remain in full force and effect.

9. RULES OF CONSTRUCTION.

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 any exhibits or amendments hereto.

10. 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.

11. 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 Developer, 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 made 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.

12. TIME OF ESSENCE / DEFAULT AND REMEDIES

Time is of the essence hereof. If any obligation required to be performed is not performed there shall be the following exclusive remedies:

(a) If Developer is in Default: In the event Developer defaults in the performance of its obligations hereunder, City shall have the right to (i) terminate this Agreement by written notice to Developer 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 the City without the showing of any special damages or an inadequate remedy at law.

by written notice to Developer 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 the City 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, Developer 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, without the posting of a bond, at the instance and request of the Developer without the showing of any special damages or an inadequate remedy at law.

13. COUNTERPARTS

This Agreement may be executed in two (2) or more 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.

IN WITNESS, WHEREOF, the Parties have executed this Agreement as of the date first above written and under the laws of the State of Colorado.

ATTEST:

CITY OF PUEBLO

City Clerk

By _____
Nicholas A Gradisar, Mayor

[S E A L]

InhabX, LLC
A Colorado limited liability company



By: (Signature)
John Wark
President and Manager

Exhibit 1



Legend

- Wark Parcel
- City Owned Prop
- City Easement on Pueblo Consv Dist

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This map is for City of Pueblo planning purposes only. The City of Pueblo, Colorado does not guarantee nor provide any warranty, expressed or implied, as to the representative completeness or accuracy of maps and data provided herein.

**PER PUEBLO WATER:
THIS DRAWING IS FOR GENERAL INFORMATION ONLY.
BEFORE CONSTRUCTION PLANS ARE FINALIZED, YOU MUST
CONTACT THE BOARD'S CIVIL ENGINEER TO VERIFY THAT
THE SIZE, TYPE, LOCATION, ETC. OF THE WATER MAIN(S)
AND/OR THE PROPOSED WATER SERVICE IS CORRECT.**

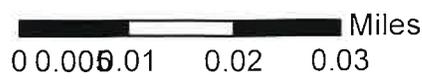


Exhibit 2

TEMPORARY EASEMENT AND RIGHT OF WAY

THIS TEMPORARY EASEMENT, granted this 26th day of September, 2022, by inhabX, LLC, a Colorado limited liability company, Grantor, to the City of Pueblo, a Colorado Municipal Corporation, Grantee:

WITNESSETH:

THAT IN CONSIDERATION of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Grantee, receipt of which is hereby acknowledged, Grantor hereby grants to Grantee, its successors and assigns, an easement and right of way for the purpose of constructing, maintaining, repairing, replacing, controlling, and demolishing a bridge, access path, irrigation system, public art exhibit, City-installed landscaping improvements, and public utilities (referred to collectively hereinafter as the "Improvements") which will be constructed or installed in, through, over, under and across Grantor's property; for providing public access and use of the Improvements situated in Pueblo County, Colorado, and described as follows: (the "Property")

See Exhibits "A" and "B"

TOGETHER WITH the right to enter upon the Property for the purposes of construction, installation, replacement, maintenance, control, repair, and demolition and the right for public access and use of the Improvements to use so much of the adjoining property of Grantor for said purposes. The Grantor reserves the right to use and occupy the Property for any purpose not inconsistent with the right and privilege above granted and which will not interfere with or endanger any of Grantee's equipment or facilities therein or use thereof.

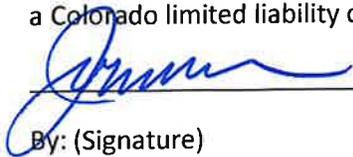
Grantor warrants to Grantee that Grantor (a) has good and sufficient right and title in and to the Property and full power to grant this easement and right-of-way, and (b) will defend Grantee's quiet and peaceful possession of the Property and easement and right-of-way against all persons who may lawfully claim title to the property.

"Grantee" shall include the plural and the feminine. This Easement and Right of Way shall be binding upon, and shall inure to the benefit of the heirs, personal representatives, successors, and assigns of the Grantor and Grantee.

This Temporary Easement shall commence on the date set forth above and shall expire and terminate on September 25, 2023. In the event there is a delay in the construction of the Main Street Pedestrian Bridge, due to circumstances beyond the control of the Grantee, the duration of this Temporary Easement may be extended as agreed to by Grantor and Grantee.

InhabX, LLC

a Colorado limited liability company



By: (Signature)

John Wark

President and Manager

EXHIBIT "A"

An easement located on a portion of Lot 10, and all of Lots 11 through 20, Block 214, of The Colorado Coal and Iron Company, a subdivision of a certain portion of The City of South Pueblo, recorded December 6, 1883, in Book 40, Page 522 in the City of Pueblo, County of Pueblo, State of Colorado.

EXHIBIT "B"



SCALE: 1"=250'

Exhibit 3

The City of Pueblo hereby acknowledges to The Pueblo Conservancy District that inhabX, LLC, the Grantee in a Quit Claim Deed dated December 15, 2021 and recorded December 20, 2021, has granted to the City of Pueblo such easements or deeds as are necessary for the placement of the proposed Main Street Bridge abutments. The City of Pueblo consents to The Pueblo Conservancy District releasing and terminating the right of reversion contained in said Quit Claim Deed.

Dated this ___ day of August, 2022

CITY OF PUEBLO

By: _____
Nicholas A. Gradisar, Mayor

ATTEST

* City Clerk