

PROPERTY USE AGREEMENT

This PROPERTY USE AGREEMENT (this "Agreement") is entered into this 5th day of January, 2024 (the "Effective Date") by and between PSIF EBS HUGHES LLC, a Delaware limited liability company ("Owner"), and the CITY OF IRVINE, a municipal corporation, on behalf of the Irvine Police Department ("Department").

WHEREAS, Owner desires to allow Department to conduct police training activities, as more fully described herein, in and upon the existing structures (the "Structures" sometimes herein) and property located at 19, 21, and 23 Hughes, Irvine, California (collectively, the "Property"); and

WHEREAS, Owner and Department enter this Agreement in order to set forth terms and conditions governing Department's use of the Property.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, Owner and Department agree as follows:

1. **License to Enter and Use Property.** Owner hereby grants to Department, a limited, revocable license to enter and use the Property, including all means of ingress and egress, at any time of day or night, to conduct the police training activities specifically permitted by this Agreement, commencing no earlier than 12:01 a.m. on the Effective Date and terminating no later than 11:59 p.m. on May 31, 2024, unless extended in writing by agreement of the parties or sooner terminated by either party providing the other with not less than five (5) business days' prior, written notice. Police training activities permitted on the Property shall be conducted by members of Department's K9 Unit and the Joint Task Force/SWAT Unit. With respect to the K9 Unit, the police training activities permitted on the Property are interior and exterior building searches, forcible entry, breaching doors, simulated firearm use, apprehension of barricaded suspects, and use of bite suits for intruder simulations (collectively, the "K9 Training Activities"). With respect to the Joint Task Force/SWAT Unit, the police training activities permitted on the Property are interior and exterior building searches, forcible entry, breaching doors, simulated firearm use, barricaded suspect scenarios, tactical and strategical operations, and communication drills (collectively, the "SWAT Training Activities" and, together with the K9 Training Activities, collectively, the "Training Activities"). Notwithstanding the foregoing, Department does not intend to, and is not permitted to, conduct training with live ammunition, in or upon the Property. Department shall conduct the Training Activities so as not to remove or destroy the hinges on any doors on the Property, create any nuisance, or unreasonably interfere with Owner, Owner's property manager in its management of the Property, and/or the operations of neighboring properties.

2. **Condition of Property.** Department's entering of the Property and use thereof shall be at Department's sole risk and expense, and Owner shall have no responsibility or liability for any loss of or damage to Department's property. Additionally, Department agrees to take the Property in its "AS-IS, WHERE-IS" condition, and Owner makes no representations or warranties with respect to the condition of the Property and/or whether Department's permitted use of the Property is permissible under applicable Laws. As used herein the term "Laws" means all federal, state, and local laws, ordinances, rules and regulations, all court orders, governmental directives,

and governmental orders and all interpretations of the foregoing, and all restrictive covenants affecting the Property and/or the Structures, and "Law" shall mean any of the foregoing.

3. **Insurance.** Department shall, at its sole cost and expense, maintain while using the Property the insurance policies set forth on Exhibit A attached hereto. Department's insurance shall provide primary coverage to Owner when any policy issued to Owner provides duplicate or similar coverage, and in such circumstance Owner's policy will be excess over Department's policy. Prior to the Effective Date and thereafter upon request by Owner, Department shall furnish to Owner certificates of such insurance and such other evidence satisfactory to Owner of the maintenance of all insurance coverages required hereunder. Additionally, all insurance policies required under this Agreement shall be in form, and issued by companies with a Best's rating of A-:VII or better, reasonably satisfactory to Owner.

4. **Waiver of Negligence: No Subrogation.** Owner and Department each waives any claim it might have against the other for any injury to or death of any person or persons or damage to or theft, destruction, loss, or loss of use of any property (a "Loss"), to the extent the same is insured against under any insurance policy that covers the Property, Training Activities, personal property, improvements, or business, or, in the case of Department's waiver, is required to be insured against under the terms hereof, regardless of whether the negligence of the other party caused such loss; however, Owner's waiver shall not include any deductible amounts on insurance policies carried by Owner. Notwithstanding any provision in this Agreement to the contrary, Owner, its agents, employees and contractors shall not be liable to Department or to any party claiming by, through or under Department for (and Department hereby releases Owner and its servants, agents, contractors, employees and invitees from any claim or responsibility for) any damage to or destruction, loss, or loss of use, or theft of any property of Department located in or about the Property, caused by casualty, theft, fire, third parties or any other matter or cause, regardless of whether the negligence of any party caused such loss in whole or in part. Each party shall cause its insurance carrier to endorse all applicable policies waiving the carrier's rights of recovery under subrogation or otherwise against the other party.

5. **Indemnity:**

A. Subject to Section 4 above and in consideration of being granted the license herein to conduct the Training Activities on the Property, and except as provided in subsection B, below, Department agrees to indemnify, defend and pay reasonable attorneys' fees, and hold Owner harmless from all claims, actions, liabilities, losses, cost, expenses and proceedings, to the extent arising from Department's entry and/or use of the Property, including, without limitation, with respect to the Training Activities, to the fullest extent permitted by law. By using the Property as permitted herein, Department hereby assumes all risk of damage to Department property and injury to any Department officer, employee, or agent, or anyone else acting on Department's behalf, in, upon or about the Property, from any cause whatsoever and Department hereby waives all claims against, and releases in advance from any and all liability, Owner to the extent set forth hereinabove.

B. Owner understands and agrees that Department's use of the Property may result in damage to portions of the Structures. With full knowledge of the foregoing risks of property damage, and to the fullest extent permitted by law, Owner expressly and unequivocally

consents to Department's temporary use of the Property and use of and/or damage to any portion of the Structures, to the extent consistent with and resulting from the Training Activities.

Following completion of Department's use of the Property for the Training Activities, Department shall have no obligation to restore or repair the Property including the Structures; provided, however, Department shall remove its personal property, all debris, damaged building materials, or any other solid or liquid waste resulting from the Training Activities, including, without limitation, paintballs, paint overspray, and shell casings.

6. **Commencement of Department Use.** Prior to entering the Property on any given day during the term of this Agreement to conduct the Training Activities, Department will meet with Owner's designated representative, to coordinate Department's activities on the Property for that day, and will notify such representative when departing the Property. Department shall use its best efforts to avoid interfering with Owner's activities on the Property.

7. **Owner's Liability.** Owner shall have no liability to Department under this Agreement.

8. **Entire Agreement.** This Agreement contains the entire agreement between Department and Owner related to the matters specified herein, and supersedes any prior oral or written statements or agreements between Owner and Department related to any such matters.

9. **Attorneys' Fees and Costs.** If any legal action or other proceeding is brought in connection with this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorney's fees and other related costs, in addition to any other relief to which the party is entitled.

10. **Governing Law and Venue.** The provisions of this Agreement shall be governed by the laws of the State of California without regard for choice of law rules. Venue for any legal action for breach or to enforce any provision herein, shall be the Superior Court of the County of Orange, California.

11. **Notices.** The notice addresses for Owner and Department shall be as follows:

If to Owner:

PSIF EBS Hughes LLC
c/o EBS Realty Partners, LLC,
1300 Bristol Street North, Suite 290
Newport Beach, CA 92660

If to Department:

Sergeant Tim McDonald_____
1 Civic Center Plaza_____
Irvine, CA 92606_____

12. **Time.** Time is of the essence in the performance of each and every obligation of this Agreement.

13. **Facsimile/PDF: Counterparts.** This Agreement may be signed by facsimile, PDF or other electronic signature mechanism and/or in multiple counterparts which, when signed by all parties, shall constitute a binding agreement.

Wherefore, the parties have executed this Agreement as of the Effective Date.

CITY OF IRVINE

By: Michael Kent

Name: Michael Kent

Title: Chief of Police

ATTEST:

By: Carl Peterson

Name: Carl Peterson

Title: City Clerk

APPROVED AS TO FORM:

By: Jeffrey Melching

Name: Jeffrey Melching

Title: City Attorney

PSIF EBS HUGHES LLC,
a Delaware limited liability company

By: PSIF Hughes LLC,
a Delaware limited liability company,
its Member

By: Karen Nista

Name: Karen Nista

Title: Managing Director

EXHIBIT A

DEPARTMENT INSURANCE REQUIREMENTS

Department shall procure and maintain at all times, at Department's own expense, during the term of this Agreement, the insurance coverages and requirements specified below, insuring all operations related to the Agreement.

The kinds and amounts of insurance are as follows:

- (a) Workers' Compensation and Employers Liability Insurance.

As and to the extent required by applicable law, statutory workers' compensation insurance and employer's liability insurance with limits not less than legally required limits; including (if applicable) a Longshoremen's and Harbor Workers' Compensation Act coverage endorsement.

- (b) Commercial General Liability Insurance.

Commercial general liability insurance, including coverage for contractual liability, tenants legal liability, products-completed operations liability, personal and advertising injury liability with respect to Department's use, maintenance and occupancy of the Property, in amounts of not less than

\$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate for property damage and bodily injury, including death. If liquor is stored, served or distributed on or from the Property, Department shall also maintain liquor liability insurance in a minimum amount of \$1,000,000.00 either as an endorsement to the commercial general liability policy or as a separate policy.

- (c) Umbrella Liability Insurance.

Umbrella and/or excess liability insurance with limits not less than \$2,000,000 each occurrence and in the aggregate.

- (d) Commercial Automobile Insurance (Primary and Umbrella).

If and when any motor vehicles (owned, non owned and hired) are used in connection with work to be performed, Department shall provide automobile liability insurance with minimum limits of \$1,000,000.00 each accident or combined single limit, including coverage for all owned, non-owned, hired and borrowed vehicles that are driven on to the Property.

- (e) All Risk Property Insurance.

Property insurance for loss or damage to Department's business personal property, including permanently installed improvements and betterments, and trade fixtures. Coverage shall be provided on an "all-risk" basis using the Special Cause of Loss form with replacement cost valuation and shall include the perils of wind and flood, including coverage for loss of business income.

An Additional Insured Endorsement shall be attached to the Certificate of Insurance listing Owner and any other party reasonably designated by Owner as additional insureds on the commercial general liability, umbrella liability, and commercial automobile insurance policies. All insurance policies required to be carried by Department pursuant to this Agreement shall be primary and non-contributory.

Department shall additionally comply, at Department's sole cost and expense, with any and all insurance requirements now or in the future required by any lender of Owner.