

**INDEMNITY AND HOLD HARMLESS AGREEMENT  
BETWEEN  
THE CITY OF SAN JOSE  
AND  
DUKE REALTY**

This AGREEMENT is made and entered into this 6th day of March, 2022 by and between the CITY OF SAN JOSE, a municipal corporation (“CITY”) and DUKE REALTY RUE FERRARI, LP, a Delaware limited partnership (“DUKE”).

**RECITALS**

**WHEREAS**, CITY's Police Department Canine Unit desires to conduct training scenarios at facilities owned by DUKE located at 5853-5863 Rue Ferrari, San José California (“PREMISES”); and

**WHEREAS**, DUKE is willing to permit CITY to conduct this training for the Canine Unit at PREMISES at no cost to CITY, provided that CITY provides DUKE an indemnity and hold harmless agreement;

**NOW, THEREFORE**, in consideration of these mutual covenants herein, the parties hereto agree as follows:

**SECTION 1. USE OF PREMISES.**

CITY shall be entitled to use the PREMISES, or parts thereof, throughout the term of this AGREEMENT. Canine Unit will use the PREMISES from 12 PM to 10PM beginning on the date of execution of AGREEMENT.

**SECTION 2. TERM OF AGREEMENT.**

The term of this AGREEMENT shall be from the date of final execution of the AGREEMENT and shall continue in effect until May 31, 2022 or earlier pursuant to the terms of Section 7.

**SECTION 3. SCHEDULE FOR USE OF PREMISES.**

CITY may use the PREMISES, or parts thereof, for Canine Unit training when CITY provides: (1) forty-eight (48) hours advance e-mail notice of the date, time, and nature of the training scenarios to Steven Donnay, V.P. Asset Management for DUKE and (2) receives authorization from DUKE to use the PREMISES, or parts thereof, at the agreed date and time.

**SECTION 4. COMPENSATION.**

Use of PREMISES as described above shall be granted to CITY wholly without cost.

**SECTION 5. INDEMNIFICATION.**

CITY shall indemnify, hold harmless and defend DUKE, its affiliates, and their respective officers, directors, agents, and employees from and against any and all claims, demands, actions, suits, causes of action, losses or liabilities of any kind which DUKE, its affiliates, and their respective trustees, officers, directors, agents, and employees may sustain or incur for injury to or death of persons or damage to property arising or resulting from CITY's use of DUKE's PREMISES under this AGREEMENT, excepting those resulting from the sole negligence or willful misconduct of DUKE, its affiliates, and their respective trustees, officers, directors, agents or employees. The word "affiliates" in this AGREEMENT shall mean entities that control, are controlled by, or are under common control of DUKE.

**SECTION 6. INSURANCE AND WORKERS COMPENSATION.**

- A. CITY maintains a self-insurance program as authorized under California Government Code Section 990.4. CITY agrees that its activities pursuant to this AGREEMENT are covered under its self-insurance program.
- B. CITY is self-insured against Workers' Compensation claims as authorized under California Labor Code Section 3700.
- C. CITY shall provide DUKE with a Certificate or Affidavit of Insurance certifying that

coverage as required herein has been obtained. Proof of self-insurance shall be mailed to DUKE to the person identified in Section 8 of this AGREEMENT.

**SECTION 7. TERMINATION.**

- A. CITY or DUKE shall have the right to terminate this AGREEMENT, without cause, by giving not less than seven (7) days' written notice of termination.
- B. CITY's Chief of Police is authorized to terminate this AGREEMENT on behalf of CITY.
- C. Steven Donnay, V.P. Asset Management of DUKE is authorized to terminate this AGREEMENT on behalf of DUKE.

**SECTION 8. NOTICES.**

Except for the forty-eight (48) hour advance telephone notice for building access, all notices and other communications required or permitted to be given under this AGREEMENT shall be in writing and shall be personally served, emailed or mailed, postage prepaid and return receipt requested, addressed to the respective parties as follows:

To CITY:	Chief of Police City of San José 201 West Mission Street San José, CA 95110 <a href="mailto:anthony.mata@sanjoseca.gov">anthony.mata@sanjoseca.gov</a>
To DUKE:	Attn: Steven Donnay V.P. Asset Management Duke Realty, LP 200 Spectrum Center Drive, Suite 1600 Irvine, CA 92618 <a href="mailto:steven.donnay@dukerealty.com">steven.donnay@dukerealty.com</a>

Notices shall be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the mail.

**SECTION 9. PRIOR AGREEMENTS AND AMENDMENTS.**

This AGREEMENT represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This AGREEMENT may only be modified by a written amendment duly executed by the parties to this AGREEMENT.

**SECTION 10. MISCELLANEOUS.**

- A. The parties agree that the law governing this AGREEMENT shall be that of the State of California.
- B. In the event that suit shall be brought by either party to this contract, the parties agree that the venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San José, California.
- C. The signatories to this AGREEMENT are authorized to execute this AGREEMENT on the parties' behalf.
- D. Use of Electronic Signatures: Unless otherwise prohibited by law or CITY policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a writing as set forth in Evidence Code Section 1550. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by the CITY.

WITNESS THE EXECUTION HEREOF on the day and year first hereinabove written.

APPROVED AS TO FORM:



Email: carl.mitchell@sanjoseca.gov

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CARL B. MITCHELL  
Senior Deputy City Attorney

“CITY”

CITY OF SAN JOSE, a municipal  
corporation



Email: sarah.zarate@sanjoseca.gov

By \_\_\_\_\_  
SARAH ZARATE  
Director  
Office of the City Manager

“DUKE”

DUKE REALTY RUE FERRARI, LP, a  
Delaware limited partnership

By: Duke Realty Rue Ferrari, LLC, an  
Indiana limited liability company, its  
general partner

By: Duke Realty Limited Partnership,  
an Indiana limited partnership, its sole  
member

By: Duke Realty Corporation, an  
Indiana corporation, its general partner



Email: drew.hess@dukerealty.com

By \_\_\_\_\_  
DREW HESS  
Regional Senior Vice President