

After Recording Return To:

Steven B. Price
General Counsel
Ada County Highway District
3775 Adams Street
Garden City, Idaho 83714

3335 E. Victory Rd, Meridian, ID 83642
MCIF23-0012 / MER21-0053 / C-NEW-2023-0002

This Space Reserved for Recording Purposes

IMPACT FEE ASSESSMENT AND DEFERRAL AGREEMENT

THIS IMPACT FEE ASSESSMENT AND DEFERRAL AGREEMENT (“Agreement”) made this ___ day of _____, 20__ by and between the Ada County Highway District, a body politic and corporate of the state of Idaho (“ACHD”); the City of Meridian, an Idaho municipal corporation, (“the City”); and Kam Realty LLC dba Kiddie Academy of Meridian, an Idaho corporation (“Developer”).

RECITALS

WHEREAS, Developer has acquired certain real property more particularly described in Exhibit A, hereto, and generally located at 3335 E. Victory Rd, City of Meridian, Ada County, Idaho (the “Property”);

WHEREAS, Developer will in the future make certain applications to the City regarding the development and construction of a daycare facility on the Property (the “Project”);

WHEREAS, pursuant to Idaho Code § 67-8204(3) and Section 7316.1 of ACHD Ordinance 246A, the payment of the impact fee required for the development of the Property (the “ACHD Impact Fee”) by the Developer to ACHD would normally be due at the time of issuance of a building permit for the Project;

WHEREAS, it is the desire of the Developer to defer payment of the ACHD Impact Fee pursuant to the terms of this Agreement;

WHEREAS, it is the desire of the City that Developer be able to defer payment of the ACHD Impact Fee for the purposes of encouraging development in Meridian and the City is willing to enter into this Agreement to facilitate the deferral of fees by Developer to ACHD;

WHEREAS, ACHD is willing to enter into this Agreement for the purpose of allowing the deferral of payment of the ACHD Impact Fee in consideration of the assurances, covenants, and other agreements provided herein by the City and by Developer;

WHEREAS, Idaho Code § 67-8204(3) and Section 7316.1 of ACHD Ordinance 246A authorize ACHD to enter into an agreement to defer payment of fees pursuant to written agreement between ACHD and a developer as set forth therein; Idaho Code § 67-8204A authorizes the City and ACHD to enter into intergovernmental agreements regarding the collection of impact fees; and Idaho Code § 67-8213 specifies the remedies available to ACHD charging an impact fee where such fee is not paid in accordance with the relevant ordinances;

WHEREAS, this Agreement establishes the process for the imposition, calculation and collection of the ACHD Impact Fee required for the development of the Property;

WHEREAS, the timing of the imposition, calculation and collection of the ACHD Impact Fee for the Project is related to the timing of the City's action on the necessary development permits for the Project; and

WHEREAS, the parties desire to enter into an agreement regarding the imposition, calculation and collection of the ACHD Impact Fee for the Project.

AGREEMENT

NOW, THEREFORE, pursuant to the legal authority of the Idaho Code and ACHD Ordinance 246A, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, ACHD, Developer and the City desire to memorialize their respective agreements and obligations regarding the imposition, calculation and collection of the ACHD Impact Fee and the inspections and issuance of permits for the Project.

1. Imposition of ACHD Impact Fee. Development of the Project will require the payment of the ACHD Impact Fee. ACHD has presently adopted Ordinance 246A setting forth the process, method and amount of the ACHD Impact Fee. The ACHD Impact Fee shall be imposed consistent with the ordinance in effect at the time that the City issues the Building Permit as defined in Section 2 below.

2. Calculation of ACHD Impact Fee. Pursuant to Section 7304.1 of Ordinance 246A, the ACHD Impact Fee is typically collected at the issuance of a building permit, provided, however, that Section 7316.1 of Ordinance 246A permits ACHD and a "Developer" to enter into an agreement regarding the timing of payment of the ACHD Impact Fee.

(a) Notification of Issuance of Building Permit. The City, ACHD and the Developer shall jointly work to coordinate the issuance of permits for the Project. Upon the issuance of the first permit necessary to commence construction of tenant improvements at the Project (the "Building Permit"), the City and Developer shall notify ACHD and the ACHD Impact Fee shall be calculated as of the date of the issuance of the Building Permit.

(b) Notification of Inspection for the Issuance of First Certificate of Occupancy. The Developer agrees that it shall notify the City and ACHD in writing at least thirty (30) days in advance of any request for the final inspection before the issuance of the certificate of occupancy for the Project.

(c) Applicable Impact Fee Ordinance. ACHD shall calculate the ACHD Impact Fee based upon the ordinance in effect at the time the City issues the Building Permit.

3. Collection of ACHD Impact Fee.

(a) Deferral of Fee/Enforcement. ACHD agrees that collection of the ACHD Impact Fee will be deferred as set forth herein. If the Developer is in default as set forth in Section 5(a) below, then it shall be subject to all of the remedies set forth therein and elsewhere in this Agreement. In addition, the City agrees for the benefit of ACHD that unless the Developer submits proof that the ACHD Impact Fee has been paid and ACHD confirms in writing that it has been paid, or that the ACHD Impact Fee is no longer due and payable, the City: (i) will not conduct the final inspection required for the issuance of the Occupancy Permit for the Project, (ii) will not provide any utility services for any purposes other than system testing and non-occupant use for the Project, and (iii) will exercise all default rights against Developer set forth in Section 5(a) below.

(b) Developer acknowledges and agrees that as a condition precedent to the City conducting the final inspection required prior to issuing the Occupancy Permit that Developer will pay the ACHD Impact Fee for the Project. Notwithstanding the foregoing, and notwithstanding any other provision in this Agreement, the parties agree that the ACHD Impact Fee shall in no event be deferred beyond October 31, 2024, regardless of the status of the Project and/or the status of any permits issued or to be issued by the City.

(c) Alternate Financial Guarantee. Alternatively, ACHD and Developer may agree that the payment of the ACHD Impact Fee may be deferred upon Developer providing an alternative financial guarantee to ensure payment of the ACHD Impact Fee, pursuant to a certificate of deposit or a letter of credit acceptable to ACHD. Such alternate financial guarantee shall be in an amount equal to the amount of the impact fee for the Project, pending reconciliation of the ACHD Impact Fee at a date subsequent to the issuance of a certificate of occupancy for the Project by the City.

(d) Refund of Payment of Fee. Notwithstanding any other provision of this Agreement, in order to have its building permit released, Developer may pay the ACHD Impact Fee to ACHD. If and when this Agreement is approved and executed, the parties hereto agree that ACHD will refund the ACHD Impact Fee that has been paid without interest on the funds and the deferral process contemplated herein will be implemented.

(e) **Satisfaction.** Upon payment of the ACHD Impact Fee or the provision for an alternate financial guarantee, ACHD shall notify the City of Developer's performance, and then and only then shall the City proceed with the final inspection and issuance of the Occupancy Permit for the Project. The City agrees for the benefit of ACHD that the City (including without limitation, the City's employees, officials, agents, and/or contractors) will not proceed with the final inspection and issuance of the Occupancy Permit for the Project until the foregoing condition is met.

(f) **Waiver and Estoppel.** Developer hereby waives and estops itself from asserting any claim or property right relating to the inspection or issuance of the Occupancy Permit for the Project, deferral of the payment of the ACHD Impact Fee or default remedies provided herein until ACHD receives full payment of the ACHD Impact Fee or an alternate financial guarantee as contemplated herein.

4. **Individual Assessment.** Due to the complexity and unique issues presented by the development of the Project, ACHD and Developer acknowledge that Developer retains the right to pursue an individual assessment of the ACHD Impact Fee subsequent to its payment and completion of the Project. Nothing contained herein shall preclude Developer from electing to initiate an individual assessment pursuant to Section 7312 of ACHD Ordinance 246A.

5. **Default.**

(a) If Developer defaults in the performance of their obligations under the terms and provisions of the Agreement in the time and manner required, ACHD and/or City may exercise all legal and equitable remedies against such party. In addition (and without limiting the foregoing or otherwise limiting any other rights available by law or in equity), if the ACHD Impact Fee is not paid timely (i) any unpaid amounts shall accrue interest at the legal rate provided for in Idaho Code Section 28-22-104(1), from the date the Building Permit was originally issued, (ii) ACHD may assess a penalty of \$500 per day for non-payment or late payment in accordance with Idaho Code Section 67-8213 in any reasonable amount, (iii) City shall withhold any permits related to the project or other governmental approval until the fee is paid, (iv) City shall refuse and/or suspend all utility services to the Project under its jurisdiction, and (v) in accordance with Idaho Code Section 67-8213(4), ACHD may impose a lien for failure to timely pay following the procedures contained in chapter 5, title 45, Idaho Code.

(b) If ACHD defaults in the performance of its obligations under the terms and provisions of this Agreement in the time and manner required herein, Developer shall only be entitled to non-monetary remedies, such as specific performance, declaratory relief, and injunctive relief.

(c) If City defaults in the performance of its obligations under the terms and provisions of this Agreement in the time and manner required, ACHD and/or Developer may exercise all legal and equitable remedies against such party.

6. Existing Joint Governmental Entity Agreement. ACHD and City acknowledge they are parties to an existing Impact Fee Collection Agreement (the "Collection Agreement"). ACHD and City agree that the Collection Agreement is not applicable to this Project, and that all rights between them concerning the collection of impact fees for this Project are set forth in this Agreement.

7. Acknowledgement. ACHD and City make no representations, warranties or guarantees to Developer regarding the Project. Developer assumes all risks and acknowledges that it is solely responsible for the development of this Project. Developer acknowledges, notwithstanding any other provision of this Agreement, as follows: (i) This Agreement does not affect the rules and regulations that the Developer must comply with in order to implement all governmental approvals; (ii) Any future applications or requests to ACHD and City will be governed by rules and regulations of each of the agencies in effect at the time of such request; (iii) Nothing in this Agreement shall be construed to allow the Developer any waiver or relief from any of the processes, rules and regulations Developer must follow and comply with to obtain any future approvals from the City or ACHD; (v) Nothing herein shall be construed to grant any legal entitlement or vest any property right or other right to the Developer; and (vii) Nothing in this Agreement shall be construed to provide any claim or benefit to a third party.

8. General Provisions.

(a) **Agreement Addresses Process Only.** The parties acknowledge and agree that nothing herein shall be deemed to limit or restrict the deliberation or action taken by ACHD to the extent that it has authority relating to its review and consideration of the permits related to the Project. The parties acknowledge and agree that this Agreement is intended solely to provide for the processes that will be applied to the ACHD Impact Fee for the Project.

(b) **Severability.** Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Agreement.

(c) **Attorneys' Fees.** Should any action be brought to interpret or enforce any provision hereof, or for damages for breach hereof, the prevailing party shall be entitled to such reasonable attorneys' fees as may be determined by any court of competent jurisdiction wherein such action is brought, including attorneys' fees on any appeal.

(d) **Assignment/Recording.** The rights, benefits or obligations under this Agreement may not be assigned by Developer, in whole or in part, without the prior written consent of both ACHD and the City, which may be withheld in either of their sole

discretion. Without limiting the foregoing, the obligations to ACHD or the City contained herein shall run with the land and shall inure to the benefit of and be binding upon the successors and assigns of the parties hereof, until such time as the Project is complete and ACHD has received full payment of the ACHD Impact Fee. A copy of this Agreement shall be recorded in the real property records of Ada County, Idaho. Upon the payment of the ACHD Impact Fee by Developer, this Agreement shall terminate and the parties shall execute the termination and release set forth in the form attached as Exhibit B.

(e) Entire Agreement. This Agreement contains the entire Agreement between the parties respecting the matters herein set forth and supersedes all prior Agreements between the parties hereto respecting such matter. No acknowledgments required hereunder, and no modification or waiver of any provision of this Agreement or consent to departure therefrom, shall be effective unless in writing and signed by each party hereto.

(f) Construction. This Agreement shall be construed in accordance with the laws of the State of Idaho.

(g) Counterparts. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(h) Recitals. The parties confirm the accuracy of the Recitals set forth in this Agreement and the same are incorporated herein as part of this Agreement.

(i) Time of the Essence. Time shall be of the essence for all events and obligations to be performed under this Agreement.

(j) Independent Parties. The relationship between the Parties shall not be that of partners, agents, or joint venturers for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes. In performing any of their obligations hereunder, the Developer is an independent party and shall discharge its contractual obligations at its own risk. The Parties agree that nothing herein contained shall be construed to create a joint venture, partnership, or other similar relationship which might subject any party to liability for the debts and/or obligations of the others, except as otherwise expressly agreed in this Agreement.

(k) Notices. All notices, requests, consents, approvals, payments in connection with this Agreement, or communications that either party desires or is required or permitted to give or make to the other party under this Agreement shall only be deemed to have been given, made and delivered, when made or given in writing and personally served, or deposited in the United States mail, certified or registered mail, postage prepaid, or sent by reputable overnight courier (e.g., FedEx) and addressed to the parties as follows:

ACHD: Ada County Highway District
Attn: Megan Anderson
1301 N Orchard Street Suite 200
Boise, Idaho 83706

DEVELOPER: Kam Realty LLC dba Kiddie Academy of
Meridian
Attn: Vijay Ilavarasan
2219 NW Sierra Way
Camas, WA 98607

City City of Meridian
Attn: City Clerk
33 E Broadway Avenue
Meridian, Idaho 83642

Notice shall be deemed given upon actual receipt (or attempted delivery if delivery is refused), if personally delivered or rejected.

(l) Amendment to Ordinances. The parties acknowledge that Ordinance 246A may be amended, repealed and superseded at any time. The ACHD Impact Fee shall be imposed, calculated and collected pursuant to any impact fee ordinance subsequently adopted by ACHD in accordance with Idaho Code § 67-8201 *et seq.* To the extent that references to specific sections incorporated in Ordinance 246A are made herein, those references shall be deemed to refer to the related provisions of any subsequently adopted impact fee ordinance by ACHD.

(m) Further Acts. The parties will execute and deliver to the others, from time to time, for no additional consideration and at no additional cost to the requesting party, such further assignments, certificates, instruments, records, or other documents, assurances or things as may be reasonably necessary to give full effect to this Agreement and to allow each party fully to enjoy and exercise the rights accorded and acquired by it under this Agreement.

(n) Acknowledgments and Modifications. No acknowledgments required hereunder, and no modification or waiver of any provision of this Agreement or consent to departure therefrom, shall be effective unless in writing and signed by all of the parties.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed by its duly authorized officers the day and year first above written.

Signatures and notary acknowledgments to follow on next page

ACHD
ADA COUNTY HIGHWAY DISTRICT

By _____
Alexis Pickering, Commission President

STATE OF IDAHO)
)ss.
County of Ada)

On this ___ day of _____, 20___, before me, a Notary Public, personally appeared Alexis Pickering, known or proved to me to be the Commission President of the Ada County Highway District, a body corporate and politic of the state of Idaho, the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same on behalf of said entity.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public
Residing at _____
Comm. Expires _____

DEVELOPER

Kam Realty LLC dba Kiddie Academy of Meridian

By: 
Vijay Ilavarasan, Owner

STATE OF WASHINGTON)


)ss.

County of Clark)

On this 8th day of May, 2023, before me, a Notary Public, personally appeared Vijay Ilavarasan, known or proved to me to be the owner, of Kam Realty LLC dba Kiddie Academy of Meridian, the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same on behalf of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.




Notary Public
Residing at Meridian, Idaho
Comm. Expires 9-21-2028

CITY
CITY OF MERIDIAN

By: _____
Robert Simison, Mayor

STATE OF IDAHO)
)ss.
County of Ada)

On this _____ day of _____, 20____, before me, a Notary Public, personally appeared Robert Simison, known or proved to me to be the Mayor of the City of Meridian, the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same on behalf of said entity.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public
Residing at _____
Comm. Expires _____

Exhibit A
Legal Description of Property

Lot 3 in Block 1 of Shops at Victory Subdivision, according to the official plat thereof, filed in Book 110 of Plats at Pages 15698 through 15700, records of Ada County, Idaho

Exhibit B
Form Termination and Release