

AGREEMENT FOR CONSTRUCTION AND JOINT USE OF PICKLEBALL FACILITY AT KLEINER PARK

This AGREEMENT FOR CONSTRUCTION AND JOINT USE OF PICKLEBALL FACILITY AT KLEINER PARK ("Agreement") is made this ____ day of _____, 2022 ("Effective Date"), by and between the City of Meridian, a municipal corporation organized under the laws of the State of Idaho ("City") and BVBC Cadence Village, LLC ("BVBC"), a limited liability company organized under the laws of the State of Idaho (collectively, "Parties").

WHEREAS, the Parties are mutually interested in enhancing the Meridian community's quality of life by providing and supporting recreational facilities and opportunities, including those related to pickleball, for members of the Meridian community;

WHEREAS, the Parties recognize that through cooperation between public and private parties, publicly-held facilities can be enhanced to meet broader community needs for athletic programming and recreation;

WHEREAS, BVBC has proposed to construct pickleball facilities at Kleiner Park, located at 1900 N. Records Avenue, in Meridian, Idaho ("Park"), for use by residents of Bri at the Village, an apartment building owned by BVBC and located at 2233 N. Records Way, in Meridian Idaho (Ada County parcel no. R1343720350), as well as by members of the public;

WHEREAS, upon the expiration of this Agreement, and in consideration of past and proposed contributions and commitments of the Parties to maintenance and upkeep of the Pickleball Facility, the Parties agree to consider extending the term hereof, if such extension is in the best interest of both Parties and appropriate under the circumstances;

WHEREAS, the Parties' respective governing bodies find that it is fiscally responsible and in the best interest of the community to enter into an agreement for the construction and use of pickleball facilities at Park;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, and in consideration of the mutual promises and covenants herein contained, the Parties agree as follows:

I. CONSTRUCTION OF PICKLEBALL FACILITY

A. BVBC's obligations.

- 1. Construction of Pickleball Facility.** BVBC shall construct in Park four (4) six-inch (6") concrete slab courts, and related facilities, features, amenities, concrete walkway, landscaping, and irrigation (collectively, "Pickleball Facility"), to be developed generally at the location, and in accordance with the plan, as show in *Exhibit A* hereto. Such construction shall include, but shall not necessarily be limited to, the following:
 - a. Configuration of courts.** BVBC shall conduct survey work necessary to maximize the number of pickleball courts, as may be configured horizontally and/or vertically, in the desired location in Park.

- b. **Specifications.** BVBC shall construct the Pickleball Facility in accordance with industry standards for such facilities. Specifically, BVBC's construction of the Pickleball Facility shall include, but shall not be limited to, each and all of the following:
 - (1) Excavation of a minimum of twenty-four inches (24") of soil, removal from the site, in order to accommodate concrete flatwork;
 - (2) Grading the affected area within a tolerance of two inches (2");
 - (3) Demarcation of regulation baselines, centerlines, sidelines, and non-volley lines;
 - (4) Installation of Plexipave coating over the concrete courts;
 - (5) Paving, sawcutting and installation of concrete slab with color coat system, five feet (5') in width, with a concrete ribbon, as shown in *Exhibit A*, or post-tension concrete with color coat system;
 - (6) Installation of a black vinyl-clad chain-link fence with a height of four feet (4') on the front and back of each court, with no fencing on the courts' sides; and
 - (7) Installation of pickleball net posts and net systems on each court.
2. **Final Completion.** Upon final completion of the Pickleball Facility, BVBC shall obtain and deliver to City:
 - a. Waivers of lien from any and all sub-contractors and major materials suppliers;
 - b. Report from an independent testing agency approving the structural soundness of the constructed pickleball courts and installation materials and methods; and
 - c. Written proof of final inspection and approval of the Pickleball Facility by the Parks Superintendent.
3. **Primary Source of Contact for BVBC.** BVBC shall provide City the name, e-mail address, and telephone number of specific BVBC personnel (hereinafter "BVBC Construction Contact") who shall serve as BVBC's primary contact between City and BVBC for all matters regarding construction of the Pickleball Facility.

B. City's obligations.

1. **Temporary construction easement conveyed.** City does hereby give, grant and convey unto BVBC a temporary easement over and across that portion of the Park reasonably necessary to stage and use materials and equipment during the construction of the Pickleball Facility, as directed by the Superintendent of the Meridian Parks and Recreation Department. BVBC's right to have and to hold the said easement and right-of-way on the Premises shall be temporary, and shall terminate upon City's Final Acceptance of the Pickleball Facility as set forth in this Agreement. Following City's Final Acceptance of the Pickleball Facility, City shall restore the construction easement area.
2. **Amenities.** City shall install any comfort and convenience amenities at the Pickleball Facility, at City's sole election.
3. **Drainage.** City shall construct the drainage swale as depicted in *Exhibit A*.
4. **Primary Source of Contact for City.** City shall provide BVBC the name, e-mail address, and telephone number of specific City personnel (hereinafter "City Construction Contact") who shall serve as City's primary contact between City and BVBC for all matters regarding construction of the Pickleball Facility.

5. **Final Acceptance.** Following Final Completion, as signified by BVBC's delivery of the enumerated documentation as specified herein, the City shall execute Final Acceptance of the Pickleball Facility, which shall be signified by City's adoption of a resolution indicating that the City accepts the delivery of the Pickleball Facility as constructed by BVBC and delivered to City.

II. JOINT USE OF PICKLEBALL FACILITY

A. Obligations and rights contingent on Final Acceptance. City's Final Acceptance of the Pickleball Facility as described in this Agreement shall be contingent on, and a condition precedent to, the obligations and rights of the Parties related to the joint use of the Pickleball Facilities pursuant to this section II.

B. BVBC's obligations.

1. **Primary Source of Contact for BVBC.** BVBC shall provide City the name, e-mail address, and telephone number of specific BVBC personnel (hereinafter "BVBC Pickleball Contact") who shall serve as BVBC's primary contact between City and BVBC for all matters regarding the day-to-day scheduling, use, and maintenance of the Pickleball Facility.
2. **Reasonable use.** BVBC shall employ best efforts to ensure that the use of the Pickleball Facility by the residents of Bri at the Village is appropriate and reasonable, i.e., commensurate with typical daily use of a pickleball court and related amenities. BVBC shall exercise best efforts to see that any and all use of the Pickleball Facility, where such use is scheduled or authorized by BVBC, is in compliance with all laws and with City's policies regarding use of City parks and/or facilities, including, but not limited to, such reasonable policies as may be adopted or enacted by the Director of the Meridian Parks and Recreation Department.

B. City's obligations.

1. **Maintenance and utilities.** City shall provide all usual maintenance and repair of the Pickleball Facility and related amenities, as necessary. City shall provide all necessary utilities to the Pickleball Facility, as needed. Except as otherwise set forth herein, City shall repair and/or replace any utility infrastructure, amenities, and/or vegetation that are physically damaged by use, misuse, vandalism, acts of nature, weather, or other damage or wear and tear. City shall provide custodial services at the Pickleball Facility.
2. **Scheduling.** Except as otherwise set forth herein, and with due regard for BVBC's priority use as set forth herein, City shall be solely responsible for scheduling of all use and reservations of the Pickleball Facility.
3. **Primary Source of Contact for City.** City shall provide BVBC the name, e-mail address, and telephone number of specific City personnel (hereinafter "City Pickleball Contact") who shall serve as City's primary contact between City and BVBC for all matters regarding the day-to-day scheduling, use, and maintenance of the Pickleball Facility.

C. Rights of residents of Bri at the Village.

- 1. Definition of resident.** For purposes of this Agreement, a “resident of Bri at the Village” shall mean a person who is listed as a tenant on a valid, current lease between such person and BVBC or BVBC’s agent that leases residential living units at the Bri at the Village. The rights granted to residents of Bri at the Village by this Agreement shall not be transferrable to any other persons, including any agent, guest, invitee, or sublessee of a resident(s) of Bri at the Village.
- 2. Priority reservation.** For ten (10) years from the date of City’s Final Acceptance of the Pickleball Facility, residents of Bri at the Village shall be entitled to Priority Reservation of the Pickleball Facility between 10:00 a.m. and 12:00 p.m. (noon) on Mondays, Wednesdays, and Fridays (“Priority Reservation Times”). Priority Reservation shall include the rights to reserve pickleball courts at the Pickleball Facility, at no charge, during the Priority Reservation Times. To exercise Priority Reservation rights, residents of Bri at the Village shall contact the Meridian Parks and Recreation Department (“MPR”) and reserve a pickleball court during the Priority Reservation Times. MPR shall not allow persons who are not residents of Bri at the Village to reserve the pickleball courts at the Pickleball Facility during the Priority Reservation Times. However, it is agreed by the parties that at all times not subject to a reservation confirmed by MPR, including during the Priority Reservation Times, the Pickleball Facility and all components thereof shall be open to use by both residents of Bri at the Village, and by the general public, on a first-come, first-served basis. Reservations at times other than the Priority Reservation Times shall be available to both residents of Bri at the Village, and to the general public, on a first-come, first-served basis. All reservations, including those made by residents of Bri at the Village during Priority Reservation Times, shall be subject to, and shall comply all respects, with any and all applicable state laws, City ordinances, and/or City or MPR policies.
- 3. Collection of fees.** Absent specific written approval from the Director of the Meridian Parks and Recreation Department, no person or persons, including, but not limited to, BVBC or Bri at the Village residents, shall be authorized to assess or collect fees from any person, persons, or group using the Pickleball Facility, including any fee for use of the Pickleball Facility under a Priority Reservation.
- 4. No right to exclude conveyed.** The Priority Reservation rights granted to the residents of Bri at the Village by this Agreement shall not include the right to exclude any law-abiding person from Pickleball Facility or Park where such person is not interfering with the reserving party’s use thereof, nor the right to interfere with any person’s concurrent, lawful use of the Pickleball Facility or Park where such concurrent use does not conflict or interfere with the reserving party’s use. At all times when the Pickleball Facility are not reserved, including during the Priority Reservation Times, the residents of Bri at the Village shall be on an equal footing with the general public regarding use of Pickleball Facility, which shall include, but shall not be limited to, reservation requirements and payment of all applicable reservation and other fees. The residents of Bri at the Village shall exercise the Priority Reservation rights granted by this Agreement only in accordance with the terms of this Agreement and in accordance with any and all applicable laws and City policies.

D. Rights of City.

1. **Public park.** The parties hereto expressly acknowledge that Park is a public space, the management and scheduling of which shall at all times be within the sole purview of City. City shall have the right to use or allow the use of Park for any and all purposes and under any and all conditions, so long as such use does not directly interfere with a reserved use of Pickleball Facility. All provisions of state law, Meridian City Code, and MPR policy, as such provisions exist on the Effective Date and as may be later adopted or amended, shall apply in Park and in Pickleball Facility. City shall have the right to close Park and/or the Pickleball Facility for maintenance, repairs, or where closure is in the best interest of the public health, safety, or welfare. It is acknowledged by the Parties that when Park, Pickleball Facility, or any component of Pickleball Facility is closed, such closed area is closed to both the general public and to residents of the Bri at the Village, and Priority Reservation rights shall not apply.
2. **Alterations/improvements to Park.** City shall have the right to make alterations of Park and/or to construct or locate fences, fixtures, structures, and/or any other improvements in or upon Park or Park facilities, infrastructure, and vegetation, so long as such alterations, construction, or improvements will not unreasonably affect BVBC's use of the Pickleball Facility as set forth in this Agreement, except that City may undertake alterations, construction, or improvements to or in Park on an immediate basis without notice to BVBC where such action is necessary to protect the health, safety, and/or welfare of the public.
3. **Collection of Fees.** Except as otherwise specifically set forth in this Agreement, in accordance with applicable law and policies, City shall have right to assess and collect reasonable user fees from persons who use Park or the Pickleball Facility. BVBC shall not be entitled to any user fee or portion thereof assessed and/or collected by City.

III. GENERAL PROVISIONS.

The following provisions shall be applicable during both BVBC's construction of the Pickleball Facility, and BVBC's and City's joint use of the Pickleball Facility.

- A. **Notice.** Communication between the BVBC Construction Contact and the City Construction Contact regarding day-to-day matters shall occur via e-mail or telephone. Communication between the BVBC Pickleball Contact and the City Pickleball Contact regarding day-to-day matters (e.g., issues related to facility condition, use, scheduling, or maintenance of the Pickleball Facility) shall occur via e-mail or telephone. All other notices required to be given by either of the parties hereto shall be in writing and be deemed communicated when personally served, or mailed in the United States mail, certified, return receipt requested, addressed as follows:

To City:

City of Meridian
Attn: Parks and Recreation Director
33 E. Idaho Avenue
Meridian, Idaho 83642

To BVBC:

BVBC Cadence Village, LLC
Attn: Robert Phillips, Manager
2929 W. Navigator Drive
Suite 400
Meridian, Idaho 83642

Any party may change its authorized representative and/or address for the purpose of this paragraph by giving written notice of such change to the other party in the manner herein provided.

- B. Time of the essence.** The Parties acknowledge and agree that time is of the essence with respect to this Agreement, and that the failure to timely perform any of the obligations hereunder shall constitute a breach of, and a default under, this Agreement by the party so failing to perform.
- C. Assignment.** BVBC shall not assign or sublet all or any portion of its respective interests in this Agreement or any privilege or right hereunder, either voluntarily or involuntarily, without the prior written consent of City. This Agreement and each and all of the terms and conditions hereof shall apply to and are binding upon the respective organizations, agents, legal representatives, successors, and assigns of the parties.
- D. No agency.** Neither BVBC nor its respective employees, agents, lessees, contractors, officials, officers, servants, guests, and/or invitees shall be considered agents of City in any manner or for any purpose whatsoever in their respective construction, use, and/or occupancy of Park or the Pickleball Facility.
- E. Insurance – BVBC.** BVBC shall submit to City proof of an insurance policy issued by an insurance company licensed to do business in Idaho protecting BVBC, and BVBC's employees, agents, contractors, officials, officers, servants, guests, and/or invitees from all claims for damages to property and bodily injury, including death, which may arise in connection with construction of the Pickleball Facility. Such insurance shall name City as an additionally insured party, and shall afford at least one million dollars (\$1,000,000.00) per person bodily injury, one million dollars (\$1,000,000.00) per occurrence bodily injury, and one million dollars (\$1,000,000.00) per occurrence property damage. The limits of insurance shall not be deemed a limitation of the covenants to indemnify and save and hold harmless City as set forth in this Agreement. If City becomes liable for an amount in excess of the insurance limits herein provided due to the actions or omissions of BVBC or any BVBC employee, agent, contractor, official, officer, servant, guest, and/or invitee, BVBC covenants and agrees to indemnify and save and hold harmless City from and for all such losses, claims, actions, or judgments for damages or liability to persons or property.
- F. No warranty; use is on as-is basis.** City makes no warranty or promise as to the condition, safety, usefulness, or habitability of the Park and Pickleball Facility; BVBC and each and all of its employees, agents, tenants, contractors, officials, officers, servants, guests, and/or invitees, and all participants in BVBC programming related to the Pickleball Facility accept Pickleball Facilities for all uses as they are. BVBC acknowledges that use of the Pickleball Facility carries risks, some of which are unknown, and with that knowledge does assume all known and unknown risks of using the Pickleball Facility.
- G. Compliance with laws.** In performing the scope of services required hereunder, City and BVBC shall comply with all applicable laws, ordinances, and codes of federal, state, and local governments.
- H. Attorney fees.** Should any litigation be commenced between any or all of the Parties hereto concerning this Agreement, the prevailing party shall be entitled, in addition to any other relief as

may be granted, to court costs and reasonable attorneys' fees as determined by a court of competent jurisdiction. This provision shall be deemed to be a separate contract between the parties and shall survive any default, termination or forfeiture of this Agreement.

I. Term of Agreement. This Agreement shall become effective as of the Effective Date upon execution by all parties. As to BVBC, except as otherwise set forth herein, this Agreement shall expire upon City's Final Acceptance of the Pickleball Facility, unless earlier terminated or extended in the manner as set forth in this Agreement. As to BVBC, except as otherwise set forth herein, this Agreement shall expire ten (10) years from the date of City's Final Acceptance of the Pickleball Facility, unless earlier terminated or extended in the manner as set forth in this Agreement.

J. Termination.

1. **Grounds for termination.** Grounds for termination of this Agreement shall include, but shall not be limited to:
 - a. An act or omission by any party which breaches any term of this Agreement.
 - b. An act of nature or other unforeseeable event which precludes or makes impossible the performance of the terms of this Agreement by any party.
 - c. A change in circumstances that renders the performance by any party a detriment to the public health, safety, or welfare.
2. **Termination process.** Any party may terminate this Agreement by providing ninety (90) days' advance written notice of intention to terminate. Such written notice shall include a description of the breach or circumstances providing grounds for termination. A thirty (30) day cure period shall commence upon mailing of the notice of intention to terminate. If, upon the expiration of such cure period, cure of the breach or circumstances providing grounds for termination has not occurred, this Agreement may be terminated upon provision of written notice of termination.

K. Nonappropriation. The Parties acknowledge that City is a governmental entity, and the validity of this Agreement is based upon the availability of public funding under the authority of City's statutory mandate.

L. Construction and severability. If any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or enforceability of any other part of this Agreement so long as the remainder of the Agreement is reasonably capable of completion.

M. Exhibits. All exhibits to this Agreement are incorporated by reference and made a part of this Agreement as if the exhibits were set forth in their entirety in this Agreement.

N. Entire Agreement. This Agreement contains the entire agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith. The terms of this Agreement may not be enlarged, modified or altered except upon written agreement signed by all relevant parties hereto.

O. Non-waiver. Failure of any party to promptly enforce the strict performance of any term of this Agreement shall not constitute a waiver or relinquishment of any party's right to thereafter

enforce such term, and any right or remedy hereunder may be asserted at any time after the governing body of either party becomes entitled to the benefit thereof, notwithstanding delay in enforcement.

P. Applicable law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Idaho and the City of Meridian.

Q. Approval required. This Agreement shall not become effective or binding until approved by the respective governing bodies of BVBC and City.

IN WITNESS WHEREOF, the parties shall cause this Agreement to be executed by their duly authorized officers to be effective as of the day and year first above written.

BVBC CADENCE VILLAGE, LLC:

BY: 
Robert Phillips for Brighton Corporation
Manager, BVBC Cadence Village, LLC

CITY OF MERIDIAN:

ATTEST:

BY: _____
Robert E. Simison
Mayor

Chris Johnson
City Clerk

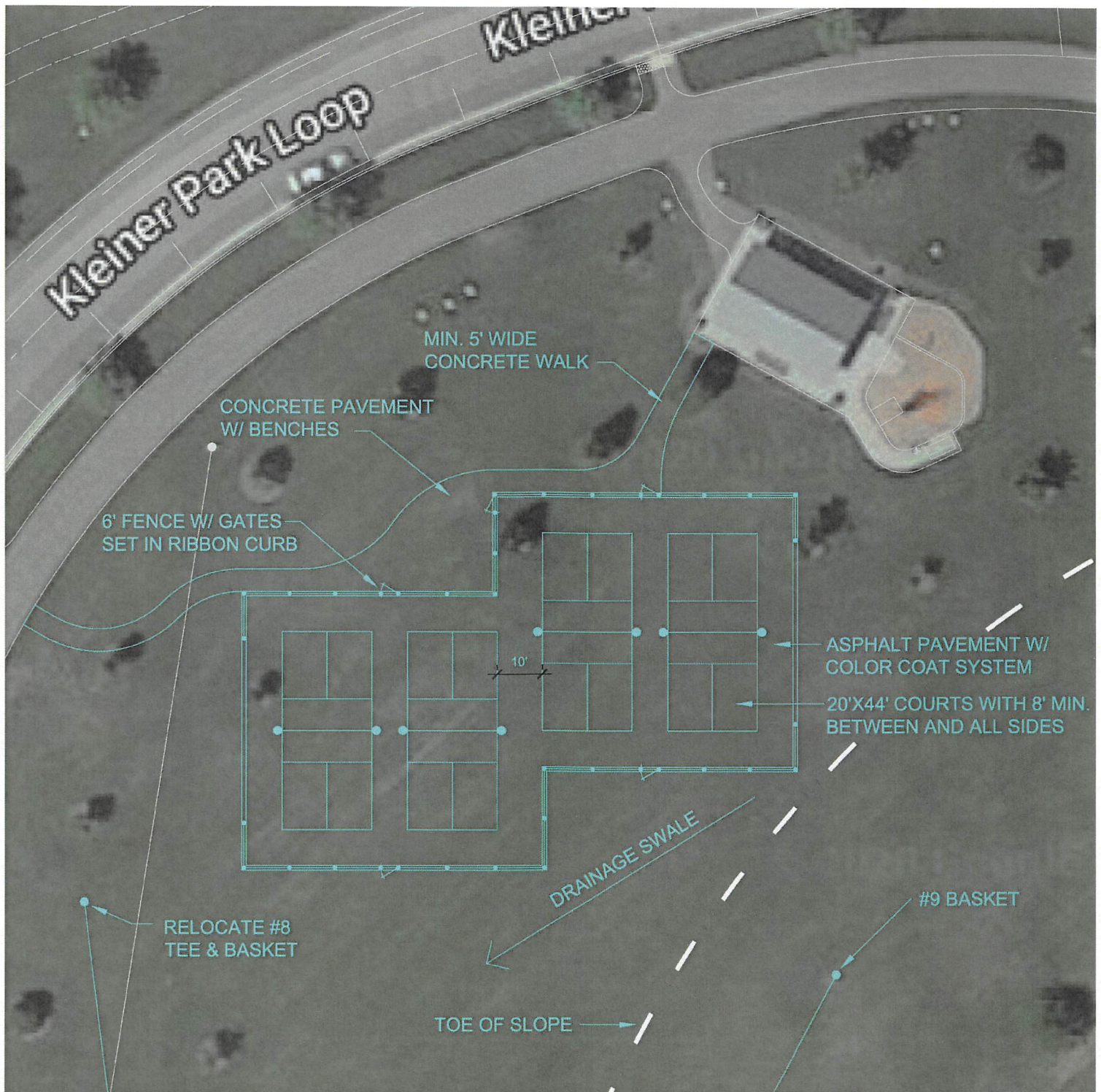


Exhibit A

KLEINER PICKLEBALL

OPTION E

