

DEVELOPMENT AGREEMENT

This Development Agreement (this "Agreement") is dated May __, 2022, but made effective for all purposes as of May 24, 2022 (the "Effective Date"), and is entered into between City of John Day ("City"), an Oregon municipal corporation, whose address is 450 E. Main Street, John Day, Oregon 97845, John Day Urban Renewal Agency ("Agency"), whose address is 450 E. Main Street, John Day, Oregon 97845, and Mahogany Ridge (individually and collectively, "Ridge"), whose address is _____.

RECITALS:

A. Ridge intends to partition and develop that certain real property commonly known as The Ridge and more particularly described and depicted on the attached Exhibit A (the "Property"). The Property consists of approximately 80 acres located within City's incorporated limits at the east end of John Day. Ridge intends to develop the Property into a 20-parcel residential subdivision to be known as "The Ridge – Phase 1" (the "Development"), which Development is more particularly described and depicted on the attached Exhibit B.

B. New roads will be improved and extended over and across the Property to East Main Street (the "Street Extension"). The Street Extension was approved by and through the 2009 John Day Local Street Area Network Plan and 2019 John Day Innovation Gateway Area Plan. The Street Extension is authorized under City Ordinance No. 19-177-01 as an addition to the John Day Comprehensive Land Use Plan.

C. Subject to the terms and conditions contained in this Agreement, City and Agency desire to provide Ridge certain incentives to assist with the Development in exchange for Ridge's transfer, conveyance, and dedication of the Development Improvements and Right-of-Way to City.

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Definitions. Unless defined elsewhere in this Agreement, capitalized terms contained in this Agreement have the meanings assigned to them in the attached Appendix A.

2. Land Use Application. Ridge submitted the Application to City for review and approval. The Application concerns the Development, Street Extension, and Right-of-Way dedication described in Section 3.4. The Application was approved by the John Day Planning Commission on or about June 3, 2021.

3. Development Improvements. Ridge will construct and complete, at Ridge's cost and expense, the Development Improvements subject to and in accordance with the terms and conditions contained in this Agreement, including, without limitation, the following:

3.1 Design. Ridge will obtain all land use, development code, and/or construction approvals necessary for the Development Improvements. Ridge will obtain, at Ridge's cost and expense, all necessary designs, plans and specifications, permits, licenses, reviews, inspections, reports (including, without limitation, environmental reports), and approvals necessary under the Laws to design, develop, construct, and complete the Development Improvements.

3.2 Construction. Ridge will prosecute completion of the Development Improvements diligently, continuously, and in accordance with the Public Improvement Design and Construction Standards, Decision, Laws, and this Agreement. City will assist and cooperate with Ridge's completion of the Development Improvements, including, without limitation, promptly providing any information and/or documentation Ridge may request from time to time. Subject to the terms and conditions of this Agreement, Ridge intends to complete the Development Improvements on or before June 30, 2023.

3.3 Minimum Standards. Subject to the terms and conditions contained in this Agreement, Ridge will perform (or cause to be performed) the following at Ridge's cost and expense: (a) construct the Development Improvements expeditiously and in a good and workmanlike manner; (b) furnish, provide, and pay for all labor, materials, equipment, tools, supplies, machinery, transportation, and/or services necessary or appropriate to construct the Development Improvements; (c) properly manage and dispose of all waste, garbage, and debris resulting from construction of the Development Improvements subject to and in accordance with the Laws; (d) pay when due all charges for labor and materials used for construction of the Development Improvements; and (e) timely and properly pay any third-party contractors for any construction services concerning the Development Improvements subject to and in accordance with the Laws.

3.4 Improvements and Right-of-Way Conveyance. Ridge will transfer, convey, and dedicate the Development Improvements and Right of Way to City immediately upon completion of the Development Improvements and recording of the Final Plat, as depicted in Exhibit B. Ridge will take all actions and execute all documents, instruments, orders, and/or agreements City deems necessary or appropriate to effectuate the transfer, conveyance, and dedication of the Development Improvements to City. Ridge will transfer, convey, and dedicate the Development Improvements free and clear of all Encumbrances except the Permitted Encumbrances.

3.5 Taxes. City is a tax-exempt municipal corporation. Notwithstanding anything contained in this Agreement to the contrary, City will not pay any real and/or personal property taxes concerning or related to the Development Improvements or Right-of-Way. In accordance with ORS 311.411, prior to Ridge's transfer and conveyance of the Development Improvements and Right-of-Way, Ridge will deliver to City a certificate issued by the Grant County Assessor attesting that all "charges against the real property" (as defined under ORS 311.411) have been paid by Ridge in full

4. Ridge Incentives. Subject to the terms and conditions contained in this Agreement, City and/or Agency will provide the following financial and other incentives concerning or related to the Development (individually and collectively, the "Incentive(s)"):

4.1 Agency Incentives. Subject to and in accordance with the John Day Urban Renewal Area Housing Incentive Plan (approved and adopted through City Ordinance No. 18-173-03) and Laws, Agency will provide and/or pay the following: (a) Agency will pay seven percent (7%) cash back on all new homes constructed and completed within the Development subject to and in accordance with the Urban Renewal Agency area plan (provided, however, each property owner must apply for the owner's URA incentive as part of the owner's land use review); and (b) Agency will pay the SDCs for Eligible Homes.

4.2 Expense Reimbursement. Prior to Ridge's transfer and conveyance of the Development Improvements and Right-of-Way to City, Agency will reimburse costs and expenses associated with the Development Improvements up to \$749,999 (collectively, the "Expenses"), save an except for those expenses previously incurred by City (the "City Pre-Agreement Expenses"). Expenses will be pro-rated and reimbursed based on progress milestones and actual receipts for time and materials provided by Ridge or Ridge's representatives, as described in Exhibit C. Ridge is liable for the timely payment and performance of all liabilities, obligations, costs, and/or expenses arising out of or related to the Property and Development Improvements prior to reimbursement of the Expenses.

5. Ridge Representations; Warranties; Covenants. In addition to all other Ridge representations, warranties, and covenants contained in this Agreement, Ridge represents, warrants, and covenants to City and Agency as follows:

5.1 Authority; Binding Obligation; Conflicts. Ridge has full power and authority to sign and deliver this Agreement and to perform all his, her, and/or its obligations under this Agreement. This Agreement is the legal, valid, and binding obligation of Ridge, enforceable against Ridge in accordance with its terms. Ridge's signing and delivery of this Agreement and performance of his, her, and/or their obligations under this Agreement will not (a) breach any agreement to which Ridge is a party, or give any person the right to accelerate any obligation

of Ridge, (c) violate any law, judgment, and/or order to which Ridge is subject, and/or (d) require the consent, authorization, and/or approval of any person, including, without limitation, any governmental body. No action, arbitration, audit, hearing, investigation, litigation, suit, and/or other proceeding is pending or threatened against Ridge. Ridge owns the Property in fee simple, free and clear of all Encumbrances. No representation or warranty made under this Agreement includes any untrue statement or omits to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading.

5.2 Sophistication; Investigation; Disclosure. Ridge has knowledge and experience in real estate development matters necessary to make Ridge capable of evaluating the merits and risks of this Agreement. Ridge has entered into this Agreement on the basis of its own examination and personal knowledge. Ridge has had full opportunity to investigate and examine, and to ask questions and receive answers concerning this Agreement. Ridge has obtained all information desired in connection with this Agreement. Ridge has not relied on any representations or warranties made by City and/or Agency other than those expressly contained in this Agreement. Ridge has reviewed all plans and specifications concerning the Development Improvements, Public Improvements, and Right-of-Way dedication and is satisfied with the nature, location, and all other aspects of the Development Improvements, Public Improvements, and Right-of-Way. Ridge has disclosed this Agreement to all lenders and other persons or entities having a financial, ownership, and/or possessory interest in or to the Property.

5.3 Transfers. Ridge will not Transfer in any manner whatsoever, whether voluntarily or involuntarily, any interest in or to this Agreement, the Development Improvements, Property, and/or Incentives without City's prior written consent. Subject to the immediately preceding sentence, Ridge will not Transfer any interest in or to this Agreement, the Development Improvements, Property, and/or any Incentives unless and until the following conditions are met or satisfied: (a) the assignee or transferee agrees in writing (in form and substance reasonably satisfactory to City and Agency) to assume and abide by the terms and conditions contained in this Agreement; (b) Ridge demonstrating to City's and Agency's satisfaction that the assignee or transferee is capable of successfully performing all Ridge's obligations under this Agreement in accordance with this Agreement; and (c) Ridge providing City and Agency no less than ninety (90) days' prior written notice of the proposed Transfer. Subject to the terms and conditions contained in this Section 5.3, this Agreement will be binding on the parties and their respective heirs, executors, administrators, successors, and assigns and will inure to their benefit.

5.4 Waiver of Remonstrance. To facilitate installation of the Development Improvements upon the occurrence of an Event of Default, Ridge hereby forever waives and releases all right to remonstrate against the formation of a local improvement district or reimbursement district by City and/or any third party for the purpose of constructing the Development Improvements. The term "right to remonstrate" refers to a property owner's right under applicable law to be counted as part of objecting property owners that can, in certain circumstances, suspend proceedings on the formation of a local improvement district or reimbursement district. This waiver does not limit or otherwise restrict the ability of a property owner bound by this covenant to appear at any of the required public hearings and testify regarding the formation of a local improvement district or reimbursement district, whether the boundaries include all benefited property, the equity of the assessment formula, the scope and nature of the project, or of the final assessment (or any other issue regarding the local improvement district or reimbursement district). **THIS WAIVER OF REMONSTRANCE RUNS WITH THE LAND AND IS BINDING ON ALL CURRENT AND FUTURE INTEREST HOLDERS IN THE PROPERTY.**

6. Term; Termination; Remedies; Indemnification.

6.1 Term. Subject to the terms and conditions contained in this Agreement, the term of this Agreement commenced on the Effective Date and will remain in full force and effect until the earlier of (a) completion of the Transaction; and/or (b) an Event of Default. This Agreement may be extended by the parties' mutual written agreement.

6.2 Event of Default. Subject to the terms and conditions contained in this Agreement, a party will be deemed in default under this Agreement upon the occurrence of one or more of the following events (each an "Event of Default"): (a) the party breaches and/or otherwise fails to perform any of the party's representations, warranties, covenants, and/or obligations contained in this Agreement; and/or (b) in the case of Ridge, any

proceeding under any bankruptcy and/or insolvency laws is commenced by or against Ridge or any attachment, seizure, and/or levy is made concerning the Property.

6.3 Prior Notice of Default. Prior to any party declaring an Event of Default, the non-defaulting party will provide the alleged defaulting party prior written notice of the alleged default (the "Default Notice"), which Default Notice will specify with reasonable particularity the default the non-defaulting party believes exists. Commencing on the alleged defaulting party's receipt of the Default Notice, the alleged defaulting party will have ten (10) days within which to cure or remedy the alleged default(s) (the "Cure Period"); provided, however, if the nature of the default(s) is such that it cannot be completely remedied or cured within the Cure Period, there will not be a default by the alleged defaulting party under this Agreement if the alleged defaulting party begins correction of the default within the Cure Period and thereafter proceeds with reasonable diligence to effect the remedy as soon as practicable. Notwithstanding anything contained in this Agreement to the contrary, a non-defaulting party is not required to provide, and the alleged defaulting party is not entitled to receive, a Default Notice upon the alleged defaulting party's commitment of a default under this Agreement for which the alleged defaulting party has previously received a Default Notice within the immediately preceding twelve (12) months (commencing from the date of the previous default).

6.4 Rights and Remedies. Upon occurrence of an Event of Default, the non-defaulting party may, in addition to any other remedy provided to the non-defaulting party under this Agreement, pursue all remedies available to the non-defaulting party at law or in equity, including, without limitation, termination of this Agreement. All available remedies are cumulative and may be exercised singularly or concurrently. Without otherwise limiting the generality of the preceding, if City terminates this Agreement due to Ridge's default, City will recover (and Ridge will pay immediately upon City's demand) the full cost and expense of any work performed by City to complete the Development Improvements, Public Improvements, and/or acquire the Right-of-Way, including, without limitation, construction, engineering, surveying, and legal fees, costs, and expenses (including costs of labor, equipment, machinery, and supplies). Termination of this Agreement will not constitute a waiver of any rights, claims, and/or causes of action City may have against Company. No action taken by City hereunder will affect any other rights or remedies of City or relieve Company from any consequences or liabilities arising from such acts or omissions.

6.5 Indemnification. A party will defend, indemnify, and hold the other party and the other party's Representatives harmless for, from, and against all claims, actions, proceedings, damages, liabilities, injuries, losses, and expenses of every kind, whether known or unknown, including, without limitation, attorney fees and costs, resulting from or arising out of the following: (a) damage, injury, and/or death to person or property caused by the party and/or the party's Representatives; (b) the party's failure to pay any tax arising out of or resulting from this Agreement; and/or (c) the party's breach and/or failure to perform any of the party's representations, warranties, covenants, and/or obligations contained in this Agreement. A party's indemnification obligations provided in this Section 6.5 will survive the termination of this Agreement.

7. Miscellaneous.

7.1 Assignment; Further Assurances; Memorandum. Subject to Section 5.3, this Agreement will be binding on the parties and their respective heirs, personal representatives, successors, and permitted assigns, and will inure to their benefit. Ridge will sign such other documents and instruments and take such other actions as City determines reasonably necessary or appropriate to further effect and evidence this Agreement. The parties will execute and record the Memorandum contemporaneously with the parties' mutual execution of this Agreement.

7.2 Costs; Attorney Fees. Ridge will bear Ridge's own fees, costs, and expenses incurred in connection with this Agreement, including, without limitation, all attorney fees and costs incurred in the preparation, negotiation, signing, and performance of this Agreement. If any arbitration, action, suit, and/or proceeding is instituted to interpret, enforce, and/or rescind this Agreement, including, without limitation, any proceeding brought under the United States Bankruptcy Code, the prevailing party on a claim will be entitled to recover with respect to the claim, in addition to any other relief awarded, the prevailing party's attorney fees and other fees, costs, and expenses of every kind, including, without limitation, the costs and disbursements specified in ORCP 68 A(2), incurred in connection with the arbitration, action, suit, or proceeding, any appeal or petition for review, the collection of any

award, or the enforcement of any order, as determined by the arbitrator or court.

7.3 Time of Essence; Notices. Time is of the essence with respect to all dates and time periods in this Agreement. Any notice required under this Agreement must be in writing. All notices required under this Agreement must be in writing. Any notice will be deemed given when personally delivered or delivered by email or facsimile transmission (with electronic confirmation of delivery), or will be deemed given three days following delivery of the notice by U.S. mail, postage prepaid, certified, return receipt requested, by the applicable party to the address of the other party first shown above (or any other address that a party may designate by notice to the other party), unless that day is a Saturday, Sunday, or legal holiday, in which event it will be deemed given on the next following business day.

7.4 Amendment; Waiver; Severability. This Agreement may be amended only by a written document signed by both parties. No waiver will be binding on a party unless it is in writing and signed by the party making the waiver. A party's waiver of a breach of a provision of this Agreement will not be a waiver of any other provision or a waiver of a subsequent breach of the same provision. If a provision of this Agreement is determined to be unenforceable in any respect, the enforceability of the provision in any other respect and of the remaining provisions of this Agreement will not be impaired.

7.5 Further Assurances; Survival; Governing Law. The parties will sign other documents and take other actions reasonably necessary to further effect and evidence this Agreement. The termination of this Agreement, regardless of how it occurs, will not relieve a party of obligations that have accrued before the termination. All provisions of this Agreement that would reasonably be expected to survive termination or expiration of this Agreement will do so. This Agreement is governed by the laws of the State of Oregon, without giving effect to any conflict-of-law principle that would result in the laws of any other jurisdiction governing this Agreement. Any action, suit, or proceeding arising out of the subject matter of this Agreement will be litigated in courts located in Grant County, Oregon. Each party consents and submits to the jurisdiction of any local, state, or federal court located in Grant County, Oregon.

7.6 Entire Agreement; Interpretation; Discretion. This Agreement contains the entire understanding of the parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the parties with respect to the subject matter of this Agreement. All pronouns contained herein and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The word "or" is not exclusive. The words "include," "includes," and "including" are not limiting. The titles, captions, or headings of the sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. For purposes of this Agreement, the term "person" means any natural person, corporation, limited liability company, partnership, joint venture, firm, association, trust, unincorporated organization, government or governmental agency or political subdivision, or any other entity. When a party is exercising any consent, approval, determination, and/or similar discretionary action under this Agreement, the standard will be the party's reasonable discretion, which consent, approval, determination, and/or similar discretionary action will not be unreasonably withheld, conditioned, and/or delayed.

7.7 No Partnership; No Agency. This Agreement does not create an agency relationship between City, Agency, and/or Ridge and does not establish a joint venture or partnership between City, Agency, and/or Ridge. Ridge does not have the authority to bind City and/or Agency and/or represent to any person that Ridge is an agent of City and/or Agency. City and/or Agency will have no obligation with respect to Ridge's debts and/or liabilities in any nature whatsoever. Ridge is not carrying out a function on behalf of City and/or Agency.

7.8 Force Majeure. City will not be responsible and/or liable for any failure to perform and/or delay in performance of an obligation under this Agreement caused by fire, civil unrest, labor unrest, material shortages, natural causes, war, and/or any other circumstances which may be beyond City's reasonable control. City will, however, make reasonable efforts to remove or eliminate such cause of failure to perform and/or delay in performance and will, upon the cessation of the cause, diligently pursue performance of its obligation under this

Agreement.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be binding and effective for all purposes as of the Effective Date.

City:
City of John Day,
an Oregon Municipal Corporation

Ridge:
Josh Walker and Russ Comer

By: Ron Lundbom, Mayor

Josh Walker

Agency:
John Day Urban Renewal Agency

Russ Comer

By: Nicholas Green, Director

DRAFT

Appendix A
Definitions

“Agency” has the meaning assigned to such term in the preamble.

“Agreement” has the meaning assigned to such term in the preamble.

“Application” means Ridge’s master planned development application, MPD-21-02, which application is further described in Section 2.

“City” has the meaning assigned to such term in the preamble.

“City Pre-Agreement Expenses” means those water pipes, sewer pipes and conduit purchased by City.

“Cure Period” has the meaning assigned to such term in Section 6.3.

“Decision” has the meaning assigned to such term in Recital B.

“Default Notice” has the meaning assigned to such term in Section 6.3.

“Development” has the meaning assigned to such term under Recital A and is more particularly described and depicted on the attached Exhibit B.

“Development Improvement(s)” means _____.

“Effective Date” has the meaning assigned to such term in the preamble.

“Eligible Homes” means _____.

“Encumbrance(s)” means any liens, mortgages, pledges, security interests, and/or other encumbrances.

“Environmental Law(s)” means any federal, state, and/or local statute, regulation, and/or ordinance, or any judicial or other governmental order pertaining to the protection of health, safety, or the environment and/or designed to minimize, prevent, punish, or remedy the consequences of actions that damage or threaten the environment or public health and safety, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§9601 et seq., ORS 468B.195-197 (including any regulations promulgated thereunder), the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq., and the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq.

“Event of Default” has the meaning assigned to such term in Section 6.2.

“Expenses” has the meaning assigned to such term in Section 4.2.

“Final Plat” means the legal document recorded with Grant County delineating, among other things, the Development’s property boundaries (including all lots located within the Development), dedicated rights-of-way, and easements.

“Ridge” has the meaning assigned to such term in the preamble.

“Ridge Property” has the meaning assigned to such term in Section 3.2.

“Incentives” has the meaning assigned to such term in Section 4.

“Law(s)” means all applicable federal, state, and local policies, rules, regulations, leases, covenants, conditions, restrictions, easements, declarations, laws, statutes, liens, ordinances, orders, codes, and/or regulations directly or indirectly affecting the Apartment Development and/or Public Improvements, including, without limitation, the Americans with Disabilities Act of 1990 (and the rules and regulations promulgated thereunder), Environmental Laws, and City’s building and zoning codes, all as now in force and/or which may hereafter be amended, modified, enacted, and/or promulgated.

“Memorandum” means a memorandum of this Agreement which will be recorded against the Property in the Grant County Official Records, which memorandum will be in form and substance acceptable to City.

“Permitted Encumbrance(s)” means with respect to the Right-of-Way and Ridge Property (a) any exception that is disclosed on the Title Report and accepted by City in writing, and (b) subject to the terms and conditions contained in this Agreement, any lien, mortgage, pledge, security interest, or other encumbrance arising by operation of law for taxes, assessments, or government charges not yet due (excepting real and personal property taxes).

“Property” has the meaning assigned to such term under Recital A and is more particularly described and depicted on the attached Exhibit A.

“Public Improvement Design and Construction Standards” means City’s applicable public improvement design and construction standards applicable at the time the Development Improvements are constructed, including, without limitation, all requirements applicable to curbs and gutters, aggregate road base, hot mix asphalt, signing, striping, storm drainage, improvements, public water and waste water improvements, landscaping, and lighting as defined in the John Day Municipal Code and Land Use Development Code.

“Representative(s)” means each present and future officer, director, manager, member, employee, agent, contractor, and/or representative of the identified party.

“Right-of-Way” means the real property subject to the dedications identified in Section 4.3.

“SDCs” means City’s then-applicable system development charges.

“Street Extension” has the meaning assigned to such term in Recital B.

“Transfer” means any sale, assignment, mortgage, sublet, lien, conveyance, encumbrance, and/or other transfer (whether directly, indirectly, voluntarily, involuntarily, and/or by operation of law).

Exhibit A
Property Description and Depiction

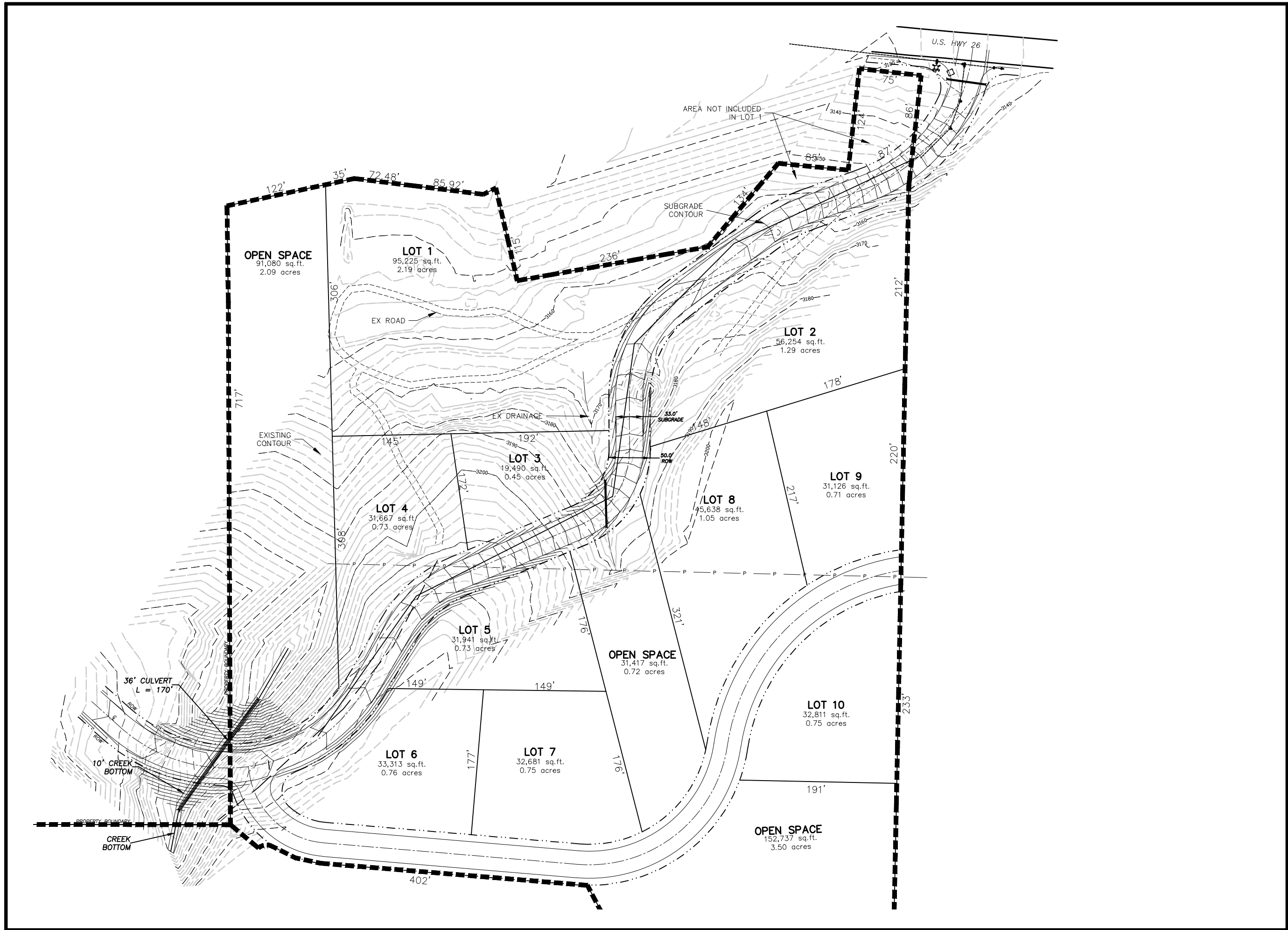
[attached]

DRAFT

Exhibit B
Development Description and Depiction

[attached]

DRAFT



REVISIONS	BY

**THE RIDGE
PHASE 1**
MAHOAGANY RIDGE
PROPERTIES LLC

**PLAN
OVERVIEW**

SISUL ENGINEERING
158 E. MAIN STREET
JOHN DAY, OREGON
(541) 575-3777

DATE	NOV 2021
SCALE	NOTED
DRAWN	XX
JOB	XX
SHEET	1
OF	1 SHEETS