

August 28, 2019

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City and County Building  
1437 Bannock St., Rm. 451  
Denver, CO 80202

RE: Joint Application for Rezoning for the Great Divide and McWhinney Project (No. 2018i-000086)

Ladies and Gentlemen:

We represent McWhinney Real Estate Services, Inc., a Colorado corporation ("**McWhinney**") with respect to its revised joint rezoning application submitted July 29, 2019 ("**Application**") with co-applicant Great Divide Brewing Company ("**Great Divide**", together with McWhinney, the "**Applicants**"), to rezone the approximately 4.75-acre property generally located at the southwest corner of 35th Street and Brighton Boulevard, which such property, since the existing zoning (PUD-G7 UO-2) was put into place, was the subject of a zone lot amendment, and is now an approximately 2.181-acre property more particularly described in the Application ("**Great Divide Property**") and an approximately 2.561-acre property more particularly described in the Application ("**Future McWhinney Property**", together with the Great Divide Property, the "**Property**"), in the City and County of Denver, Colorado ("**City**") to C-MX-8, with IO-1 and DO-7 overlay zone districts, together with the standards described therein ("**Rezoning**"). McWhinney is the contract-purchaser of the Future McWhinney Property, and Great Divide is the owner of the Property.

This letter is intended to supplement the Application and provide the Denver Planning Board members ("**Planning Board**") and Denver City Council members ("**City Council**") with additional information to aid in reviewing and approving the requested Rezoning, including information explaining why we believe the Application meets or exceeds the City's criteria for approval of the Rezoning.

The Application is for the following to be approved by Planning Board, and ultimately by City Council:

1. Rezoning the Property from PUD-G7 UO-2 zone district to C-MX-8 zone district with IO-1 and DO-7 overlay zone districts; along with
2. Waiver from the City with respect to the uses permitted under the C-MX-8 zone district in order for Great Divide to continue its current use of the Great Divide Property within the C-MX-8 zone district (hereinafter, the "**Use Waiver**").

McWhinney and Great Divide request Planning Board's recommendation of approval and City Council's approval of the Rezoning in order to permit McWhinney to develop the Future McWhinney Property into a vibrant mixed use development currently contemplated to include either (i) ground floor activated retail units, with office space and residential units above ground floor, or (ii) ground floor activated retail units,

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with residential units above ground floor. In either case, the design will include the minimum required number of parking spaces (either below grade or shielded above ground level parking). Though the exact development program has not been selected yet, the contemplated community will conform to a to-be-determined sustainability certification (the "**McWhinney Project**"). McWhinney is still exploring exactly what the project for the Future McWhinney Property will contain and how it will be laid out, but the project will comply with the requirements for C-MX-8 and DO-7 (and if McWhinney determines that it will take advantage of the height incentives, also IO-1), and all applicable law as well as any applicable affordable housing linkage fee or build-to requirements, such that the McWhinney Project will be an equitable and inclusive project.

McWhinney and Great Divide also request Planning Board's recommendation of approval and City Council's approval of the Rezoning in order to allow Great Divide, with the addition of a Use Waiver, to adopt the underlying zoning and continue to operate its existing facility. Additionally, if the Rezoning were approved, it would remove the Property from a PUD zoning designation and cause the Property to be compatible with the zone district prevailing in the Neighborhood (as defined below). Currently, a majority of the properties surrounding the Property are C-MX-12, C-MX-8 or I-MX-8, and each are in IO-1 and DO-7 overlay zoning districts.

Great Divide will submit its site development plan amendment for the Great Divide Property in a separate application to the City. McWhinney will also be submitting a new site development plan concept application and will schedule an initial concept review meeting.

Please note that Great Divide has given its consent in each instance that the Property owner's permission is required under the Denver Zoning Code, effective date June 25, 2010 as restated in its entirety on May 24, 2018 and as amended through July 26, 2019 ("**Zoning Code**"), and this letter shall serve as evidence of Great Divide's written authorization for McWhinney to represent a property owner.

### **NEIGHBORHOOD OUTREACH**

The Property is located within River North Arts District (the "**Neighborhood**"). The Applicants discussed the Rezoning with the Neighborhood's Business Improvement District (the "**BID**") board, as well as with the BID executive leadership group in 2018. Then in early 2019, Great Divide formally presented at a BID board meeting. All feedback from the BID with respect to the Rezoning has been positive.

Additionally, the Applicants reached out to each of the registered neighborhood organizations that are within two hundred feet (200') of the Property (individually "**RNO**", or collectively "**RNOs**") and each of the property owners within two hundred feet (200') of the Property ("**Neighbors**") and invited them to an open house meeting, which occurred December 12, 2018 at the Great Divide Brewery, to discuss the Rezoning and proposed McWhinney Project. Those parties in attendance did not raise any concerns about the Rezoning or McWhinney Project. The Applicants then reached out to each of the Neighbors that did not attend the open house meeting and spoke with almost all of them individually about the Rezoning and McWhinney Project, and these Neighbors had no concerns regarding either. The Applicants were only unable to reach two (2) Neighbors.

Furthermore, the Applicants presented to the RiNo Arts District RNO, which was conducted in-person with a board of individuals representing the RiNo Arts District RNO (who were then to relay the information presented back to their RNO members). Again, feedback from the RiNo Arts District presentation was positive, no concerns were raised and the RiNo Arts District has provided a letter of support for the Rezoning.

The Applicants have at all times since their various meetings and presentations been available for questions or to discuss feedback with any of the RNOs or Neighbors, should they want to request follow-up communication or additional meetings. However, to date, no RNOs or Neighbors have requested follow-up or additional meetings. Finally, the Applicants will continue to be available to the RNOs and Neighbors for follow-up communications or additional meetings if necessary after the first Public Hearing.

### **ANALYSIS**

An application for a rezoning must satisfy the criteria for approval applicable to all zone map amendments and the criteria applicable to non-legislative rezonings. Zoning Code, §§ 12.4.10.7 and 12.4.10.8. What follows is an analysis of how the Application for the Rezoning exceeds or satisfies each of these criteria.

#### **I. Criteria for Zone Map Amendments**

The City Council may approve an official zone map amendment if the proposed rezoning complies with specified criteria. Zoning Code, § 12.4.10.7. The Rezoning complies with those criteria, as explained in detail below.

1. The proposed official map amendment is consistent with the City's adopted plans, or the proposed rezoning is necessary to provide land for a community need that was not anticipated at the time of the adoption of the City's plan.

The Rezoning is consistent with the City's adopted plans, as follows:

##### **a. *Comprehensive Plan 2040***

The City's Comprehensive Plan 2040 (the "**2040 Comp Plan**") is the vision for Denver for the next twenty years. The vision is composed of six elements that set long-term, integrated goals to guide the future of the City and provide guidance for City leaders, institutions and community members to shape the City. The proposed Rezoning, and the McWhinney Project that it will allow, will align closely with these six elements in several ways, including, but not limited to:

- **Equitable, Affordable and Inclusive:** The McWhinney Project will add additional housing to the Neighborhood. McWhinney is committed to building an equitable and inclusive project. Though the exact means has not yet been determined, McWhinney is exploring how it will comply with applicable affordable housing requirements, whether that is through paying the linkage fee, building affordable housing on-site, or establishing a community service use in connection with the McWhinney Project.
- **Economically Diverse and Vibrant:** The mix of uses between the retail, and potential office spaces, at the McWhinney Project and the existing manufacturing and production of malt beverages and distilled and blended liquors, with an active tasting room and tap bar, at the Great Divide facility will add to the economic diversity of the City and the Neighborhood and increase economic opportunity. The McWhinney Project will sustain and grow the City's neighborhood businesses.
- **Environmentally Resilient:** While the exact program has not been selected yet, the McWhinney Project will be in conformance with a to-be-determined sustainability certification, which will assist in the City's commitment to environmental resiliency.

- Connected, Safe and Accessible Places: The McWhinney Project will further activate the street and invite pedestrian and bicycle traffic to new retail and beverage/dining spaces, which enhances a pedestrian-friendly environment. Capitalizing on its place-making experience and success at Union Station and Dairy Block, McWhinney intends to design an inviting and vibrant public realm in the McWhinney Project. Additionally, the McWhinney Project will be near the 38<sup>th</sup> & Blake Station. Finally, the McWhinney Project will integrate residential with retail, and potentially office, which promotes a “live where you work” opportunity and encourages less vehicular transportation, more trips taken by walking, biking and transit.
- Healthy and Active: The McWhinney Project will abut the to-be-constructed Festival Street and RiNo Park along the South Platte River, and will draw pedestrians from the street through their retail, dining and beverage options to the edge of the park, which will increase traffic into Festival Park. Additionally, the new residents at the McWhinney Project will have close proximity to parks and recreation, which is a vital component of a complete neighborhood.
- Strong and Authentic Neighborhoods: The McWhinney Project will enhance the Neighborhood by (1) expanding an existing cornerstone of the Neighborhood so that Great Divide can serve more residents and draw other Denverites to the Neighborhood, and (2) adding more services, jobs and residences to the Neighborhood in a manner that is in keeping with the character and design of the general Neighborhood with the McWhinney Project.

The above list demonstrates the extent to which the Rezoning is consistent with general tenets of the future 2040 Comp Plan.

b. *New Blueprint Denver*

Like the 2040 Comp Plan, in 2019 City Council and the Denver Planning Board adopted an updated Blueprint Denver (“**New Blueprint**”). New Blueprint supplements the 2040 Comp Plan, provides further structure around the six elements that comprise the vision for Denver set forth in the 2040 Comp Plan and sets forth the recommendations and strategies for achieving the six elements of the City’s vision.

The Rezoning will allow for redevelopment of the current Great Divide Property, which will provide a balanced mix of uses, plentiful pedestrian access, and robust new economic activity where there is currently vacant and underused land. The new McWhinney Project will be compatible with the spirit and character of the existing Neighborhood. Further, the Rezoning will help implement parking reduction strategies by minimizing space dedicated to parking at the McWhinney Project through either below grade parking, or second level and above shielded structured parking. Additionally, the activation of the street and pedestrian supportive design will encourage more trips taken by walking, biking and near-by transit. Finally, the McWhinney Project will supplement housing in the Neighborhood and comply with applicable affordable housing requirements, either through payment of the linkage fee, building affordable units on-site, or establishing a community serving use in connection with the McWhinney Project.

The McWhinney Project will align closely with many of the strategies and recommendations in New Blueprint, including, but not limited to:

- **Land Use & Build Form: General 01** – Promote and anticipate planned growth in major centers and corridors and key residential areas connected by high- and medium-capacity transit corridors. Strategies for implementing this recommendation include encouraging higher-density, mixed-use development in transit-rich areas.

- Land Use & Build Form: General 02 – Incentivize or require the most efficient development of land, especially in areas with high transit connectivity. Strategies for implementing this recommendation include allowing increased density in exchange for desired outcomes, such as affordable housing, especially in transit-rich areas.
- Land Use & Build Form: General 08 – Promote environmentally responsible and resource-efficient practices for the design, construction and demolition of buildings.
- Land Use & Build Form: General 09 – Promote coordinated development on large infill sites to ensure new development integrates with its surroundings.
- Land Use & Build Form: Housing 06 – Incentivize the development of affordable housing and mixed-income housing, particularly in areas near transit, services and amenities. Strategies for implementing this recommendation include incentivizing affordable housing through zoning, such as height bonuses, especially in community corridors adjacent to transit, and additional parking reductions for projects that provide income-restricted affordable units.
- Land Use & Build Form: Economics 05 – Promote creative industries and maker spaces as vital components of Denver’s innovative economy. A strategy for implementing this recommendation includes identifying opportunities to expand the allowance for hand crafted manufacturing where it’s compatible with other uses allowed in the district.
- Land Use & Build Form: Economics 07 – Ensure Denver and its neighborhoods have a vibrant and authentic retail and hospitality marketplace meeting the full range of experiences and goods demanded by residents and visitors. Strategies for implementing this recommendation include (a) supporting locally-owned businesses to expand and evolve to meet the changing needs of residents and visitors, (b) attract the world’s innovative retail brands to provide shopping experiences and options for both residents and visitors, and (c) promote Denver’s image as the premier destination for active lifestyles, ranging from retail shopping to neighborhood activities and events.
- Land Use & Build Form: Design Quality 02 – Ensure residential neighborhoods retain their unique character as infill development occurs. This includes the use of design overlays as targeted tools in developing or redeveloping areas that have a specific design vision.
- Land Use & Build Form: Design Quality 03 – Create exceptional design outcomes in key centers and corridors. Mixed-use buildings should engage the street level and support pedestrian activity. The bulk and scale should be respectful of the surrounding character, especially in transitions to residential areas.
- Land Use & Build Form: Design Quality 04 – Ensure an active and pedestrian-friendly environment that provides a true mixed-use character in centers and corridors.

As previously outlined above, the McWhinney Project contemplates a vibrant higher-density mixed use development consistent with the spirit and character of the surrounding Neighborhood and proximal to the existing 38<sup>th</sup> and Blake transit station, generally consisting of either (i) ground floor activated retail units, with office space and residential units above ground floor, or (ii) ground floor activated retail units, with residential units above ground floor, in either case with minimized parking spaces (either below grade or shielded above ground level parking). Though the exact program has not been selected yet, the McWhinney Project will conform with a to-be-determined sustainability certification, and will comply with all applicable law, as well as any applicable affordable housing linkage fee or build-to requirements, such that

the McWhinney Project will be an equitable and inclusive project. Any future project will adhere to the zoning requirements of C-MX-8 with the DO-7 overlay zone district, and potentially take advantage of the height incentive associated with the IO-1 overlay zone district, which is the prevailing zoning designation for the surrounding Neighborhood. McWhinney intends to utilize its experience at Dairy Block and Union Station creating a vibrant public realm and attracting local makers and artisans to the McWhinney Project. Further, imposition of the DO-7 design overlay on the McWhinney Project will enhance the overall design requirements, allowing for exceptional design outcomes.

The New Blueprint also re-categorizes the original "Concept Land Uses" used in the previous Plan Map found in the City's Blueprint Denver (2002) ("**Blueprint 2002**") into the new "Future Places" in the Places Map incorporated into New Blueprint. The Property is categorized as "Community Corridor" within an "Urban Center" in the New Blueprint. According to New Blueprint, Community Corridors within the Urban Center typically provide a mix of office, commercial and residential uses, and have a wide customer draw from both residents of surrounding neighborhoods and other parts of the City. Additionally, building footprints are typically larger, and heights are generally 5-8 stories, but can be built up to 12 stories in appropriate locations. Community Corridor projects are accessible to a larger area of surrounding neighborhoods by a variety of transportation options and there are pedestrian priority areas along the corridor with people riding bicycles having access to high ease-of-use bicycle facilities. Finally, social spaces, such as patios and plazas, often occur along the street or within deeper building setbacks. The McWhinney Project, as described above, matches the vision for the Community Corridor within the Urban Center in the Places Map, and is exactly the type of project contemplated by New Blueprint in this part of the City.

c. *River North Area Plan*

The River North Plan (the "**RiNo Plan**") was adopted in June 2003 as a supplement to the City's Comprehensive Plan (2000) and Blueprint 2002. It was the first Small Area Plan pursued after the adoption of Blueprint 2002, as it was identified as among the highest priority Areas of Change by the Denver Community Planning and Development at the time Blueprint 2002 was published. One of the main purposes of the RiNo Plan is to restore the historic, mixed-use character of the area. The Neighborhood includes three (3) Areas of Change identified in Blueprint 2002, one of which is Brighton Boulevard. The RiNo Plan states what "while many of the warehouses [on Brighton] may remain for many years, a considerable amount of vacant and underutilized land makes this an area suitable for redevelopment and the creation of a mixed-use area." It goes on to explain that "Brighton Boulevard is a gateway to downtown and offers a great opportunity for services, neighborhood serving retail and a variety of other uses." The McWhinney Project, as described in this letter, will fulfill this vision for the Brighton Boulevard Area of Change.

Many of the goals and objectives identified in the RiNo Plan have been addressed since 2003, but a few of the goals and objectives still to be accomplished include: (1) rezoning portions of the area to mixed-use zone districts (which has been accomplished generally on an area wide basis, but the Property was not included in the map amendment because of its existing PUD zoning designation), (2) promote economic activity in the Neighborhood, and (3) create a variety of housing options including affordable housing. The Rezoning generally would meet the first goal and objective by bringing the Property into conformity with the surrounding Neighborhood as a mixed-use zone district. As currently envisioned, the McWhinney Project would meet the second goal and objective by increasing economic activity in the Neighborhood through the creation of new retail and, potentially, office space. Finally, the McWhinney Project would satisfy the third goal and objective by adding housing options to the Neighborhood that will be equitable and inclusive.

The RiNo Plan sets forth certain existing conditions and projections. Within the section on Economic Activity, the analysis provides lists of the demand estimates projected for each land use category. The first

three demands by land use are residential demand, retail demand and office demand. The RiNo Plan states that the market projections (as of 2003) support nearly 900 single family attached units and 675 multifamily units, approximately 300,000 to 400,000 square feet of new retail space, and more than 1.7 million square feet of new office space in the study area, each to the year 2022. As currently planned, the McWhinney Project would add multifamily units, retail space and potentially new office space.

Within the General Framework and the Economic Activity Framework for the RiNo Plan, the goals outlined include:

- Maintain viable existing businesses in such a way that they are compatible with new development and new development is compatible with them.
  - The McWhinney Project is intended to be a new development compatible with existing businesses in the Neighborhood that will comply with the design guidelines of DO-7 such that it is consistent with the spirit and character of the Neighborhood. In fact, Great Divide has elected to sell the McWhinney Property to McWhinney specifically because the McWhinney Project is compatible with Great Divide's existing business.
- Create opportunities for employees of current and future employers to live within the study boundaries and seek to connect residents of adjacent neighborhoods with jobs within the RiNo Plan's boundaries.
  - The McWhinney Project is intended to be an opportunity for employees of current and future employers in the Neighborhood to live within the Neighborhood by creating additional housing, as well as potential jobs onsite for those residents.
  - Due to the proximity to the 38<sup>th</sup> & Blake Station, residents of adjacent neighborhoods will be connected to potential new jobs created by the possibility of additional office/employment space.
- Build upon the unique land uses that exist and identify redevelopment sites and opportunities that foster the creation of a compatible mix of uses.
  - The McWhinney Project plans to develop the vacant land available at the Property into a mixed-use project.
- By adding new development to the current uses and structures, create a unique environment both in terms of an eclectic mix of uses and exciting, innovative architecture.
  - The mixed-use McWhinney Project intends to comply with the design guidelines of DO-7, which will enhance the exciting and innovative architecture in the Neighborhood.
- Provide jobs for both neighborhood residents as well as employees from outside the neighborhood that use the transportation infrastructure by promoting a diverse industrial and commercial base.
  - The McWhinney Project's intended mix of uses will create new employment opportunities in the Neighborhood by adding new retail, potentially office, and greater craft brewing capacity.
  - Due to the proximity to the 38<sup>th</sup> & Blake Station, residents of adjacent neighborhoods will be connected to potential new jobs available.
- Encourage the retention and expansion of existing retailers, and the addition of new ones...by providing a sufficient supply of appropriately zoned sites designated for commercial uses in accordance with the RiNo Plan.

- The Rezoning would expand the zoned sites designated for commercial uses in accordance with the RiNo Plan by applying the prevailing zoning district in the area to the Property, and the Use Waiver allows Great Divide to maintain its existing business at the Property.
- Encourage land uses that effectively increase the day- and night-time population of the area providing the impetus for future commercial development.
  - The creation of additional retail and entertainment services will increase the day-time population of the area, and the addition of housing units on site will increase the night-time population of the area. This expansion will further promote future commercial development in the Neighborhood.

As demonstrated above, the Rezoning and the McWhinney Project that it would allow intends to meet and exceed the goals and objectives of the RiNo Plan and approval of the Rezoning will help fulfill the RiNo Plan's vision for the Property.

d. *38<sup>th</sup> & Blake Station Area Plan and 38<sup>th</sup> & Blake Height Amendment*

The 38<sup>th</sup> & Blake Station Area Plan (the "**38<sup>th</sup> & Blake Plan**"), adopted in August 2009, is "intended to guide public and private development and infrastructure investment decisions as well as public regulation of the built environment in the vicinity of the 38<sup>th</sup> & Blake Station." Blueprint 2002 and the RiNo Plan formed the basis for the 38<sup>th</sup> & Blake Plan's recommendations. The 38<sup>th</sup> & Blake Plan's Vision Statement provides that "future development of the area will emphasize its industrial heritage, historic neighborhoods, and emerging new residential and arts and entertainment districts; provide a mix of uses where feasible and especially near the station;...provide enough housing and jobs to make non-auto travel modes those of choice; and provide living opportunities for people of all incomes, ages and backgrounds." One of the outcomes from the public input process was a strong desire by adjacent neighborhoods for local retail and services.

Developing the 38<sup>th</sup> & Blake Plan's vision began with the underlying principles of transit-oriented development (TOD). In order to succeed, TOD should address these five (5) guiding principles:

- Place-making: Create safe, comfortable, varied and attractive station areas with a distinct identity.
  - By designing the McWhinney Project according to the DO-7 overlay design standards and in keeping with the eclectic nature of the Neighborhood, it will create a more comfortable, varied and attractive station area, that is distinct from other Denver neighborhoods.
  - Further, the addition of new development in close proximity to the 35<sup>th</sup>-36<sup>th</sup> Street pedestrian bridge connecting the Neighborhood to the 38<sup>th</sup> & Blake Station will increase the safety of the area.
- Rich Mix of Choices: Provide housing, employment, transportation and shopping choices for people of all ages, household types, incomes and lifestyles.
  - Similar to the impacts from Union Station and Dairy Block, the McWhinney Project intends to add employment opportunities to the Neighborhood and provide additional housing and shopping choices for people of all ages, types, incomes and lifestyles.
- Location Efficiency: Place homes, jobs, shopping, entertainment, parks and other amenities close to the station to promote walking, biking and transit use.
  - With it's close proximity to the 35<sup>th</sup>-36<sup>th</sup> Street pedestrian bridge connecting the Neighborhood to the 38<sup>th</sup> & Blake Station, future development made possible by the



Rezoning will locate jobs, shopping, housing and entertainment close to the 38<sup>th</sup> & Blake Station, which further promotes walking, biking and transit use.

- Value Capture: Encourage all stakeholders – residents, business owners, RTD and the City – to take full economic advantage of the amenity of enhanced transit services.
  - The McWhinney Project intends to build upon and encourage use of the local transit services.
- Portal to the Region: Understand and maximize the station's role as an entry to the regional transit network and as a safe and pleasant place to live.
  - By adding high quality housing, retail, entertainment and jobs to the Neighborhood, the new development created by McWhinney intends to increase the reputation of the Neighborhood as a pleasant and safe place to live, work and play. This will make the 38<sup>th</sup> & Blake Station a more desirable stop on the rail line and maximize the station's role as an entry to the regional transit network.

While several of the 38<sup>th</sup> & Blake Plan's goals are directed to public actions, the fourth (4<sup>th</sup>) goal can be achieved through collaboration with private development: Place-Making – Utilize the station investment to strengthen existing diverse neighborhoods and create a new center for the community. The objectives to reach this goal include:

- Accommodate a compatible mix of industrial, commercial, and residential land uses within the study area.
  - The McWhinney Project plans to increase compatible commercial and residential land uses within the Neighborhood.
- Promote a unique sense of place by requiring development to respect the context of the area's diverse existing urban form characteristics.
  - The McWhinney Project will adhere to the DO-7 overlay design guidelines and intends to be in keeping with the unique character of the Neighborhood.
- Promote infill within the station area to create development that supports transit ridership, residential, and neighborhood-serving retail and services.
  - The McWhinney Project would promote infill of vacant land in close proximity to the 38<sup>th</sup> & Blake Station, adding housing, jobs, entertainment and retail that would increase transit ridership.

The 38<sup>th</sup> & Blake Plan divides the study area into five (5) distinct categories of land use designation, and the one assigned to the Property is Mixed-Use Residential. Mixed-Use Residential designation includes higher density residential, with active ground floors including residential amenities, leasing lobbies, workout facilities, parking entrances and convenience retail. The McWhinney Project fits within this land use designation perfectly. The Great Divide Property would continue to offer a desirable amenity to the new residents, as well as the greater Neighborhood and residents of other Denver neighborhoods, which draws visitors to the Neighborhood.

The 38<sup>th</sup> & Blake Plan further divides the study area into different subareas that each have their own function and character within the larger plan. The Property falls within subarea C, Mixed-Use Residential Infill and Redevelopment. The recommendation for this subarea is to increase the population of residents living near transit through the adaptive reuse of existing buildings or construction of new residential buildings along Brighton Boulevard and encourage mixed-use residential along Brighton to create a residential base around the 36<sup>th</sup> Street and Brighton node and continue southwest along Brighton towards

the Denargo Market development. While the specific building heights reflected in the 38<sup>th</sup> & Blake Plan were modified by the 38<sup>th</sup> & Blake Height Amendment (discussed below), the 38<sup>th</sup> & Blake Plan does state that maximum building heights in this area should be higher than the building heights southeast of the railroad tracks.

Five (5) Small Area Plans converge within a half-mile radius of the 38<sup>th</sup> & Blake Station: the RiNo Plan (2003), the 38<sup>th</sup> & Blake Plan (2009), the Northeast Downtown Neighborhoods Plan (2011), the Globeville Neighborhood Plan (2014), and the Elyria & Swansea Neighborhood Plan (2015). These plans provide for a unified and collective land use vision for TOD within the 38<sup>th</sup> & Blake Station Area; however, the goals and recommendations relating to building heights vary in each plan, making the City's vision of the Station Area in relation to building heights unclear. In September 2016, the 38<sup>th</sup> & Blake Station Area Height Amendments were adopted (the "**38<sup>th</sup> & Blake Height Amendment**") which updated each of the five (5) existing Small Area Plans referenced above (where there is a conflict between the 38<sup>th</sup> & Blake Height Amendment and the existing Small Area Plans, the 38<sup>th</sup> & Blake Height Amendment controls). The recommendations in the 38<sup>th</sup> & Blake Height Amendment aim to (1) make clear the vision for building height, (2) respond to changing conditions and public investment affecting the 38<sup>th</sup> & Blake Station Area and the surrounding NDCC area, and (3) support appropriate and desired growth patterns, including building form standards, and mixed income housing opportunities associated with greater density and height within the overall 38<sup>th</sup> & Blake Station Area. As part of ongoing efforts to implement the 38<sup>th</sup> & Blake Height Amendment, text and map amendments to the Zoning Code were implemented, creating the DO-7 and IO-1 overlay zone districts.

The Rezoning would accomplish the goals of the 38<sup>th</sup> & Blake Height Amendment by including the Property in the map amendment area intended to be covered by the DO-7 and IO-1 overlay zone districts and permitting a base zoning of eight (8) stories, thereby removing the Property from the existing PUD zoning designation.

As outlined above, the Rezoning is consistent with the City's adopted plans, specifically the 2040 Comp Plan, New Blueprint, RiNo Plan, 38<sup>th</sup> & Blake Plan and 38<sup>th</sup> & Blake Height Amendment, and therefore satisfies the first criteria for official zone map amendments.

2. The proposed official map amendment results in regulations and restrictions that are uniform for each kind of building throughout each district having the same classification and bearing the same symbol or designation on the official map, but the regulations in one district may differ from those in other districts.

The Rezoning seeks to rezone the Property to C-MX-8 with the DO-7 and IO-1 overlay zone districts. This would take the Property out of a PUD and put the Property into the zoning district prevailing in the Neighborhood. Currently the majority of the properties surrounding the Property are C-MX-12, C-MX-8 or I-MX-8, and each are in the IO-1 and DO-7 overlay zone districts. Therefore, the Rezoning would result in regulations and restrictions that are uniform for each kind of building throughout each district having the same classification and bearing the same symbol or designation on the official map.

3. The proposed official map amendment furthers the public health, safety and general welfare of the City.

The City has adopted multiple plans in the interest of public health, safety, and the general welfare, including the 2040 Comp Plan and New Blueprint. As described in detail above, the Rezoning and McWhinney Project further the goals, policies, and strategies in these City plans, and thus furthers the health, safety, and general welfare of the City.

II. **Criteria for Non-Legislative Rezoning.** In order for City Council to approve an official map amendment that the City Attorney has determined is not a legislative rezoning, the application must also meet both of the following criteria (Zoning Code, § 12.4.10.8):

A. Justifying Circumstances: one of the following justifying circumstances must exist:

1. The existing zoning of the land was the result of an error;
2. The existing zoning of the land was based on a mistake of fact;
3. The existing zoning of the land failed to take into account the constraints on development created by the natural characteristics of the land, including, but not limited to, steep slopes, floodplain, unstable soils, and inadequate drainage;
4. Since the date of the approval of the existing Zone District, there has been a change to such a degree that the proposed rezoning is in the public interest. Such change may include:
  - a. Change or changing conditions in a particular area, or in the city generally, or
  - b. A City adopted plan, or
  - c. That the City adopted the Denver Zoning Code and the property retained Former Chapter 59 zoning.
5. It is in the public interest to encourage a departure from the existing zoning through application of supplemental zoning regulations that are consistent with the intent and purpose of, and meet the specific criteria stated in, Article 9, Division 9.4 (Overlay Zone Districts), of the Zoning Code.

The Rezoning is a non-legislative rezoning and the circumstances described in **No. 4(a) and 4(b)** above exist with respect to the Property. With respect to justification **4(a)**, Brighton Boulevard has undergone tremendous change since the Property was originally zoned PUD in 2013. Examples of new development projects that have been added to the surrounding neighborhood under the same or similar zoning as the requested Rezoning are as follows:

- The Edison Rino, or Industry Denver Apartments, at 3063 Brighton Boulevard is a nearby (.4 miles) multifamily tower completed in 2018. This development is in a R-MU-30 zone district but is 95 feet tall above the base plane. Though the zoning is different than the subject rezone application, the uses and height is similar to what is contemplated for the McWhinney Project.
- Directly across Brighton Boulevard from the Property is the Source Hotel. This development, located within an I-MX-8 zone district, is 8 stories in height and a mixed-use development containing hotel and retail. The underlying zoning requested in the subject application would allow for a similar mass, height and use to the Source Hotel.
- The developers of “Drivetrain” recently submitted drawings to the city for site plan review. This parcel, at Brighton and 33<sup>rd</sup> Street, just to the south of the Property, is zoned CMX-12. The site plan will be high density apartments up to 7 stories with ground floor retail. The requested rezone at hand will allow for a development project similar to this one.

In addition, subsection justification **4(b)** is applicable since the real property is located within the area subject to the adopted plan guidance in the 38<sup>th</sup> & Blake Height Amendment but was not included in the map amendment because of the existing PUD zoning designation. As discussed at length above in Section I(d), the Rezoning would accomplish the goals of the 38<sup>th</sup> & Blake Height Amendment by including the Property in the map amendment area intended to be covered by the DO-7 and IO-1 overlay zone districts, thereby removing the Property from the existing PUD zoning designation, and is otherwise consistent with the City's adopted plans which were not in effect at the time the Property was originally zoned PUD, specifically the 2040 Comp Plan, New Blueprint, and 38<sup>th</sup> & Blake Height Amendment.

- B. Consistency with Neighborhood Context Description, Zone District Purpose and Intent Statements:  
The purpose of the amendment is consistent with the description of the applicable neighborhood context, and the stated purpose and intent of the proposed zone district.

1. **Consistency with Neighborhood Context:**

As described in the Zoning Code, the General Character of the Urban Center (C-) district will include "multi-unit residential and mixed-use commercial strips and commercial centers." It is also described as follows: "Multi-unit residential uses are typically in multi-story mixed use building forms. Commercial buildings are typically Shopfront and General forms. Multi-unit residential uses are primarily located along residential collector, mixed-use arterial, and local streets. Commercial uses are primarily located along main and mixed-use arterial streets."

As has been described throughout this application letter, this Rezoning request is to bring the subject Property's zoning into conformance with the zoning that already exists in the surrounding neighborhood, i.e. mostly a mix of C-MX- 8 and C-MX-12. The McWhinney Project that will ultimately be developed within the Rezoned parcel will be a multi-story mixed-use building form with both residential and commercial uses, consistent with the intended character of the Urban Center district.

2. **Consistency with the Zone District Purpose:**

Per Section 7.2 of the Zoning Code for Urban Center (C-), the following are the intended purposes (with justification for the proposed Rezone following each).

- A. *The Mixed Use zone districts are intended to promote safe, active, and pedestrian-scaled, diverse areas through the use of building forms that clearly define and activate the public street edge.*

By Rezoning the subject Property, McWhinney can develop a dense mixed-use 24 hour community that is regularly active with a diverse mix of pedestrian scale retail along busy sidewalks.

- B. *The Mixed Use zone districts are intended to enhance the convenience, ease and enjoyment of transit, walking, shopping and public gathering within and around the city's neighborhoods.*

The vision for the McWhinney Project is of a retail / entertainment / living / working hub for the RiNo neighborhood that will, in particular, take advantage of the walkability along Brighton Boulevard, the new RiNo Park adjacent and the convenience of a nearby multimodal transportation system.

- C. *The Mixed Use zone district standards are also intended to ensure new development contributes positively to established residential neighborhoods and character, and improves the transition between commercial development and adjacent residential neighborhoods.*

The McWhinney Project intends to include a sizable amount of residential space with a mix of apartment sizes and types that will increase the residential character of the RiNo neighborhood and the Brighton Boulevard corridor.

- D. *Compared to the Main Street districts, the Mixed Use districts are focused on creating mixed, diverse neighborhoods. Where Main Street districts are applied to key corridors and retail streets within a neighborhood, the Mixed Use districts are intended for broader application at the neighborhood scale.*

The future McWhinney Project, as allowed by a Rezoning, would have almost 200' of frontage along Brighton Boulevard, a key corridor in the zone district and RiNo neighborhood. The McWhinney Project is intended to provide a broad application of programming that will be at a neighborhood scale. Capitalizing on its place-making experience and success at Union Station and Dairy Block, McWhinney intends to design an inviting and vibrant public realm in the McWhinney Project.

- E. *In the Urban Center Neighborhood Context, the Mixed Use zone districts require the same level of pedestrian enhancements as the Main Street zone districts. In the Urban Center Neighborhood Context, the primary difference between the Mixed Use zone districts and the Main Street zone districts is Main Street districts mandate shopfront buildings at the street edge.*

As currently envisioned, there will be a mix of shopfronts and other programmed uses along the streets and sidewalks and will be built with all required landscaping and pedestrian enhancements for the public realm. McWhinney intends to utilize its experience at Dairy Block and Union Station creating a vibrant public realm and attracting local makers and artisans to the McWhinney Project.

- F. *Mixed use buildings have a shallow front setback range. The build-to requirements are high.*

The McWhinney Project will be designed with necessary setbacks and built-to requirements per the newly adopted zoning.

### 3. **Consistency with Intent Statements:**

Per Section 7.2.2.2 of the Zoning Code for Urban Center (C-), the following are the General Intents of the requested zoning (with justification for the proposed Rezone following each).

#### Mixed Use – 8 (C-MX-8)

C-MX-8 applies to areas or intersections served primarily by arterial streets where a building scale of 2 to 8 stories is desired.

The pending Rezoning application would add a large land parcel to the already existing stock of C-MX-8 land in the RiNo neighborhood. This concentration of height and density would be along the major artery of Brighton Boulevard. The intent of the McWhinney Project would be to build a

community with a mix of uses and heights. If the McWhinney Project takes advantage of the incentive height overlay for the McWhinney Project, it could be, at most, 12 stories.

Therefore, based on all of the above, the Rezoning satisfies both criteria for approval of a non-legislative rezoning.

#### **CONCLUSION**

We hope the foregoing information proves helpful in the City's review of the proposed Rezoning. As discussed in detail above, the Rezoning satisfies all three (3) criteria in the Zoning Code for approval of a zone map amendment, and satisfies the two (2) criteria for a non-legislative rezoning. McWhinney and Great Divide have worked hand-in-hand with the City, neighbors, and various other interested parties to ensure that the Rezoning reflects the best use of the Property and allows for development of a project that will enhance and harmonize with the Neighborhood. Therefore, we respectfully request that the City approve the proposed Rezoning.

Sincerely,



Blair E. Lichtenfels