GOOD NEIGHBOR AGREEMENT RE ATOMIC, LLC, D/B/A ATOMIC COWBOY/DENVER BISCUIT CO./FAT SULLY'S NEW YORK PIZZA, 141-143 S BROADWAY, CONCERNING A MAJOR MODIFICATION TO EXPAND THE EXISTING LICENSED PREMISES

THIS AGREEMENT is entered into by and between Baker Historic Neighborhood Association (BHNA) and West Washington Park Neighborhood Association (WWPNA), both registered neighborhood associations in the City and County of Denver, to be known collectively as Registered Neighborhood Organizations (RNOs) and Atomic, LLC d/b/a Atomic Cowboy/Denver Biscuit Co./Fat Sully's New York Pizza, located at 141-143 S Broadway, Denver, Colorado, hereinafter referred to as the “Applicant”. Applicant and both RNOs are collectively referred to herein as the “Parties.”

A. RNOs are registered neighborhood organizations in Denver, Colorado, whose neighborhood boundaries either include 141-143 S Broadway, Denver, Colorado or whose boundaries include the area of interest for 141-143 S Broadway, Denver Colorado. The RNOs are and have been engaged in efforts to protect and improve the safety and quality of life in the neighborhood surrounding 141-143 S Broadway and all parties want to continue to protect and improve the safety, health, welfare, morals and quality of life in the neighborhood.

B. The Applicant has applied for a major modification to expand the existing licensed premises at 141-143 S Broadway to include a patio on the north side of the building. That expanded license is hereinafter referred to as the “License” and the expanded premises including the patio on the north side is herein referred to as the “Premises.” Applicant is scheduled to have a hearing on said application on August 31, 2016 at 9:00 AM, (the “Hearing”) before the Denver Department of Excise and Licenses.

C. Applicant wants RNOs to refrain from opposing its pending application for the License.

NOW, THEREFORE, for good and valuable consideration, the parties hereby agree as follows:

RNOs agree they will not oppose the granting of the License and will not encourage their members to oppose the License and, in addition, will notify the Denver Department of Excise and License that they do not oppose the License.

Applicant agrees it will abide by all laws and regulations pertaining to the sale of alcohol on the Premises and further agrees to abide by all City of Denver ordinances and laws of the State of Colorado.

Applicant agrees it will act in a manner not inconsistent with or adverse to the quiet and peaceful enjoyment of neighborhood residential and business premises and:
1. Applicant shall cease the use of, and all activity on, the patio area on the north side of the building by 10:00 P.M. until 7:00 A.M. On Friday and Saturday nights the use of the patio areas shall cease by 11:30 P.M.

2. Applicant shall not allow sound leaving the north patio to exceed levels allowed by Denver Code.

3. Any person intending to lodge a complaint pursuant to the conditions placed upon this license shall first notify the Licensee, in writing, of the alleged breach of the condition. Licensee shall have 15 calendar days within which to affect a cure of the alleged breach, or such longer time as may be reasonably required under the circumstances. If a cure does not occur, such issue shall be referred to, and the parties must participate in, non-binding mediation through the City of Denver before a complaint may be received by the Denver Department of Excise & Licenses.

4. Transfer the terms of paragraph 1, 2 & 3 with the License as restrictions/conditions on the License in any transaction involving a transfer, change of ownership, sale, lease, sub-lease or assignment of the License, which three paragraphs shall be printed on the face of the License.

In order to promote the ongoing maintenance and support of the relationship and communication between the Parties, the Applicant and RNOs agree to the following provisions:

5. Install and use only downcast lighting on the north patio.

6. Post at its front door (angled between Broadway and Maple) a telephone number where a manager can be reached at all times during operating hours.

7. Applicant shall prohibit the emptying of bottles, glass, or other recyclables from inside the Premises into outside dumpsters or containers between the hours of 10:00 P.M. and 7:00 A.M.

8. Should a good faith, unresolved neighborhood complaint be made to WWPNA or BHNA regarding the operation of Applicant’s business, RNOs will use reasonable commercial efforts to transmit the complaint to the Applicant within one week after receiving the complaint.

9. Should either party believe that the other party is in default or violation of this Agreement, the party not in breach shall notify the other in writing (at the address below) of the alleged event constituting breach of this Agreement. Upon receipt of such notice, the receiving party shall have 15 calendar days within which to affect a cure of the alleged breach, or such longer time as may be reasonably required in the circumstances, provided that the party having received notice of breach shall make reasonable, continuous efforts to cure such alleged breach. If a cure does not occur, such issue shall be referred to non-binding mediation through the City of Denver.
10. Except in emergencies or potentially irreversible threats to the well-being, peace and/or quiet of the neighborhood, WWPNA and BHNA agree to forebear from making formal complaints about violations of this Agreement to the Department of Excise and Licenses or other agencies of the City and County of Denver until after written notice, the corrective period and a reasonable attempt to mediate have elapsed. However, it is understood that RNOs cannot stop individuals from making such formal complaints.

11. In the event that Applicant changes the location of its Premises, any conditions placed upon the face of the License become void, will be removed, and will not follow the Applicant to its new location.

12. Miscellaneous.

a. This Agreement is the entire agreement between the parties. This Agreement may be executed in separate counterparts (or upon separate signature pages bound together into one or more counterparts). Each of which, when so executed and delivered, shall be an original but all such counterparts shall together, constitute one and the same instrument. Facsimile or electronic signature pages shall be treated as originals for all purposes.

b. No provision of this Agreement may be released, discharged, abandoned, supplemented, amended, changed, or modified in any manner, orally or otherwise, without the written consent of the parties. Side Agreements may be entered into by the Parties provided the Applicant has demonstrated a reliable and going relationship with the two Registered Neighborhood Organizations, as well as its adjacent and surrounding neighbors, and provided the Side Agreement does not affect, modify, or alter the restrictions or conditions set forth in Paragraphs 1, 2, and 3 that are included on the face of the License as it is the intent of the Parties the restrictions and conditions are not subject to modification or amendment. Nor shall any waiver of any of the provisions be valid or enforceable unless in writing and signed by a duly authorized officer or representative of each of the Parties.

c. Both the Applicant and RNOs request that the Excise and Licenses Department include on the face of the License, paragraphs 1, 2, and 3 above; that the License be conditioned on the terms of this Agreement and that this Agreement be added to the Applicant’s file.

d. Notice to Applicant, pursuant to this Agreement, shall be sent to:

Atomic Provisions, 1515 Adams St., Denver, CO 80206;

With a courtesy copy to:

Brian Proffitt, Foster Graham Milstein & Calisher, LLP, 360 S. Garfield St., 6th Fl.,
Denver, CO 80209.
Each person signing below represents that he/she has the authority to execute and deliver this Agreement.

Executed and effective on the latest date set forth below:

BAKER HISTORIC NEIGHBORHOOD ASSOCIATION

Signed: Mathew Wasserburger, President
P.O. Box 9171
Denver, CO 80209
president@bakerneighborhood.org

Date: 8/3/16

WEST WASHINGTON PARK NEIGHBORHOOD ASSOCIATION

Signed: Nick Amrhein, President
PO Box 9866
Denver, CO 80209
president@wwpna.org

Date:

APPLICANT: ATOMIC, LLC, D/B/A ATOMIC COWBOY/DENVER BISCUIT CO./FAT SULLY'S NEW YORK PIZZA

Signed: Drew Shader, LLC Manager
141-143 S Broadway
Denver, CO 80209

Date: 8/31/16
Each person signing below represents that he/she has the authority to execute and deliver this Agreement.

Executed and effective on the latest date set forth below:

BAKER HISTORIC NEIGHBORHOOD ASSOCIATION

Signed: ___________________________ Date: ____________
Mathew Wasserburger, President
P.O. Box 9171
Denver, CO 80209
president@bakerneighborhood.org

WEST WASHINGTON PARK NEIGHBORHOOD ASSOCIATION

Signed: ___________________________ Date: 8/30/16
Nick Amrhein, President
PO Box 9866
Denver, CO 80209
president@wwpna.org

APPLICANT: ATOMIC, LLC, D/B/A ATOMIC COWBOY/DENVER BISCUIT CO./FAT SULLY’S NEW YORK PIZZA

Signed: ___________________________ Date: ____________
Drew Shader, LLC Manager
141-143 S Broadway
Denver, CO 80209