

**OPERATING AGREEMENT  
RED ROCKS 88, LLC  
A COLORADO LIMITED LIABILITY COMPANY**

THIS OPERATING AGREEMENT is made to be effective as of January 13, 2017, by Jonathan Gruskin, as the sole member of Red Rocks 88, LLC, a Colorado limited liability company (the "Company").

NOW, THEREFORE, pursuant to the Acts, the following shall constitute the Operating Agreement, as amended from time to time, for the Company.

**ARTICLE 1  
DEFINITIONS**

The following terms used in this Operating Agreement shall have the following meanings (unless otherwise expressly provided herein):

(a) "Acts" means the Colorado Limited Liability Company Act and the Colorado Corporations and Associations Act and any successor statutes thereto, each as amended from time to time.

(b) "Capital Contribution" means the amount of money and the fair market value of any property other than money contributed to the Company by the Member with respect to such Member's Membership Interest in the Company.

(c) "Cash Flow" means with respect to any given period, the excess, if any, of cash on hand in the Company as of the time of determination of Cash Flow after: (i) the payment of all operating expenses of the Company; (ii) the repayment of all advances or other loans to the Company made by Members; and (iii) the setting aside of a reasonable allowance for the Company's contingencies and anticipated obligations (including working capital reserves and reasonable reserves for the replacement of Company capital assets) as determined by the Member from time to time.

(d) "Code" means the Internal Revenue Code of 1986, as amended, or corresponding provisions of subsequent superseding federal revenue laws.

(e) "Company" means Red Rocks 88, LLC, a Colorado limited liability company.

(f) "Entity" means any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or association.

(g) "Member" means Jonathan Gruskin, the sole member of the Company.

(h) "Membership Interest" means the ownership interest of the Member in the Company at any particular time, as initially set forth in Exhibit A, including the right to vote and the right of such Member to any and all benefits to which such Member may be entitled as

provided in this Operating Agreement or the Acts, together with the obligations of such Member to comply with all the terms and provisions of this Operating Agreement and the Acts.

(i) “Operating Agreement” means this Operating Agreement as originally executed and as amended from time to time.

(j) “Person” means any individual or Entity, and the heirs, executors, administrators, legal representatives, successors, and assigns of such Person where the context so admits.

(k) “Regulations” means the federal income tax regulations, including temporary (but not proposed) regulations, promulgated under the Code.

## **ARTICLE 2 FORMATION OF COMPANY**

2.01 Formation. Upon the filing of the Articles of Organization for the Company effective as of January 13, 2017, the Company was organized as a Colorado limited liability company under and pursuant to the Acts.

2.02 Name. The name of the Company is Red Rocks 88, LLC.

2.03 Principal Place of Business. The initial principal place of business of the Company shall 595 Madison Avenue, Suite 1601, New York, NY 10022. The Company may locate or change its places of business at any other place or places as the Member may from time to time deem advisable.

2.04 Registered Office and Registered Agent. The Company’s initial registered agent and office shall be Mark Gruskin, c/o Senn Visciano Canges PC, 1700 Lincoln Street, Suite 4500, Denver, 80203, and may be changed from time to time by the Member.

2.05 Articles of Organization; Certificates. The Articles of Organization are hereby adopted and incorporated by reference in this Operating Agreement. In the event of any inconsistency between the Articles of Organization and this Operating Agreement, the terms of the Articles of Organization shall govern. The Member is authorized to file any other certificates, notices or other documents required or permitted by law to qualify the Company to do business in any jurisdiction in which the Company may elect to do business.

2.06 Term. The term of the Company shall commence on the date of its formation under Section 2.01 and shall continue until its dissolution as provided in ARTICLE 12.

2.07 Disregarded Entity. Prior to that point in time when the Company has at least two Persons each having an economic interest in the Company’s income, gains, losses, deductions, and/or credits, the Company shall be a disregarded entity, described under Regulations sections 301.7701-3(b)(1)(ii), for federal and state income tax purposes.

### **ARTICLE 3 BUSINESS OF COMPANY**

3.01 Permitted Businesses. The business of the Company shall be:

- (a) to engage in any lawful business subject to any provisions of law governing or regulating such business;
- (b) to exercise all other powers necessary or reasonably connected with the Company's business which may legally be exercised by limited liability companies under the Acts; and
- (c) to engage in all activities necessary, customary, convenient, or incident to any of the foregoing.

### **ARTICLE 4 CONTRIBUTIONS TO THE COMPANY**

4.01 Additional Capital Contributions. Other than providing to the Company the initial Capital Contribution amount set forth in Exhibit A and except as otherwise provided under the Acts, the Member shall not be obligated to make any additional Capital Contributions to the Company. If the Company needs additional capital to meet its obligations, the Company may borrow all or part of such additional capital from any source, including, without limitation, the Member. The Member shall not be obligated to make a loan to the Company.

4.02 No Third Party Beneficiaries. The provisions of this Article 4 are not intended to be for the benefit of and shall not confer any rights on any creditor or other Person (other than the Member in such Member's capacity as a Member) to whom any debts, liabilities or obligations are owed by the Company or the Member.

### **ARTICLE 5 ALLOCATIONS**

Prior to that point in time when the Company has at least two Persons each having an economic interest in the Company's income, gains, losses, deductions, and/or credits, all income, gains, losses, deductions, and credits of the Company shall be allocated solely to the Member.

### **ARTICLE 6 DISTRIBUTIONS**

Subject to the limitations of Colorado Revised Statutes section 7-80-606(1), the Member shall, from time to time, distribute the Cash Flow to the Member as the Member may determine and approve.

**ARTICLE 7**  
**BOOKS, RECORDS, AND ACCOUNTING**

The Company shall maintain at its principal place of business books of account that accurately record all items of income and expenditure relating to the business of the Company and that accurately and completely disclose the results of the operations of the Company.

**ARTICLE 8**  
**MANAGEMENT**

8.01 Management. The business and affairs of the Company shall be managed by its sole Member. The Member shall direct, manage and control the business of the Company to the best of such Member's ability and shall have full and complete authority, power and discretion to make any and all decisions and to do any and all things which the Member deems to be reasonably required in light of the Company's business and objectives. The Member shall have full authority to bind the Company and to make any decisions required to operate the Company. The Member shall have the right to delegate any authority herewith vested in him.

8.02 Officers. The Member may appoint individuals as officers of the Company ("Officers") as it deems necessary or desirable to carry on the business of the Company and the Member may delegate to such Officers such power and authority as the Member deems advisable. No Officer need be a Member of the Company. Any individual may hold two or more offices of the Company. Each Officer shall hold office until its successor is designated by the Member or until its earlier death, resignation or removal. Any Officer may resign at any time upon written notice to the Member. Any Officer may be removed by the Member with or without cause at any time. A vacancy in any office occurring because of death, resignation, removal or otherwise, may, but need not, be filled by the Member.

The initial Officer(s) of the Company shall be:

<u>Name</u>	<u>Office(s)</u>
Jonathan Gruskin	Chief Executive Officer; President; Secretary; Treasurer

8.03 Indemnity of the Member, Officers, Employees or Agents.

(a) The Company shall indemnify the Member, Officers, employees, and agents of the Company for acts performed or omitted in connection with the business of the Company.

(b) The indemnification set forth in this Section 8.03 shall in no event cause the Member to incur any liability, or result in any liability of the Member to any third party, beyond those liabilities specifically enumerated in the Company's Articles of Organization, the Acts or this Operating Agreement.

(c) Notwithstanding anything to the contrary in this Section 8.03, no Member, employee or agent of the Company shall be indemnified for any liability for fraud, bad faith, willful misconduct, or gross negligence.

(d) Notwithstanding anything to the contrary in this Section 8.03, in the event that any provision in any of Section 8.03(a) is determined to be invalid in whole or in part, such Section 8.03(a) shall be enforced to the maximum extent permitted by law.

## **ARTICLE 9 RIGHTS AND OBLIGATIONS OF MEMBER**

9.01 Limitation of Liability. The Member's liability shall be limited as set forth herein and in the Acts and other applicable law.

9.02 Company Debt Liability. The Member will not be liable personally for any debts or losses of the Company, except as provided in the Acts.

9.03 Loans by Member to Company. The Member may loan money to, act as surety for, or transact other business with the Company, and, subject to other applicable laws, shall have the same rights and obligations with respect thereto as a Person who is not a Member, but no such transaction shall be deemed to constitute a Capital Contribution to the Company.

## **ARTICLE 10 MEETINGS OF MEMBER**

10.01 Annual Meeting. Notwithstanding anything herein to the contrary, the Company shall have no annual meetings.

10.02 Special Meetings. Special meetings, for any purpose or purposes, unless otherwise proscribed by statute, may be called by the Member.

## **ARTICLE 11 ADMISSION OF MEMBER**

From the date of the formation of the Company, with the consent of the Member, and subject to applicable laws, any Person acceptable to the Member may, subject to the terms and conditions of this Operating Agreement (a) become an additional Member in this Company by the sale of new Membership Interests in the Company for such consideration as the Member shall determine, or (b) become a substituted Member as a transferee from the Member of a Membership Interest or any portion thereof. Prior to that point in time when the Company has at least two Persons each having an economic interest in the Company's income, gains, losses, deductions, and/or credits, the Member shall amend this Operating Agreement to comply with the provisions of subchapter K of the Code and the Regulations promulgated thereunder.

## **ARTICLE 12 DISSOLUTION AND TERMINATION**

The Company shall dissolve, and its affairs shall be wound up upon the first to occur of the following: (a) the written consent of the Member or (b) the entry of a decree of judicial dissolution under the Acts.

## **ARTICLE 13 MISCELLANEOUS PROVISIONS**

13.01 Application of Colorado Law. This Operating Agreement, and the application of interpretation hereof, shall be governed exclusively by its terms and by the laws of the State of Colorado, and specifically the Acts.

13.02 Amendments. The Member may amend this Operating Agreement at any time.

13.03 Construction. Whenever the singular number is used in this Operating Agreement and when required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa.

13.04 Headings. The headings in this Operating Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Operating Agreement or any provision hereof.

13.05 Severability. If any provision of this Operating Agreement or the application thereof to any Person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Operating Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

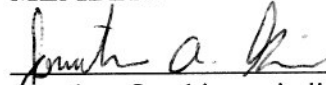
13.06 Creditors. None of the provisions of this Operating Agreement shall be for the benefit of or enforceable by any creditors of the Company.

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## CERTIFICATE

The undersigned hereby agrees, acknowledges and certifies that the foregoing Operating Agreement constitutes the Operating Agreement of Red Rocks 88, LLC adopted by the Member of the Company effective as of January 13, 2017.

**MEMBER:**

  
Jonathan Gruskin, an individual

**EXHIBIT A**

**NAME, ADDRESS  
AND MEMBERSHIP INTEREST OF MEMBER**

<b>Name</b>	<b>Initial Capital Contribution</b>	<b>Membership Interest</b>
Jonathan Gruskin 595 Madison Avenue, Suite 1601 New York, NY 10022	See books and records	100%