

**OPERATING AGREEMENT
OF
RAILBIRD EXCHANGE, LLC**

This Operating Agreement (this “Agreement”) of **Railbird Exchange, LLC**, a Nevada limited liability company (the “Company”), is made effective as of [____], 202[] (the “Effective Date”) by the member listed on Schedule A attached hereto and signing this Agreement (the “Current Member”) and any other individual or entity who is otherwise subsequently admitted as a member of the Company pursuant to the terms of this Agreement (each, including the Current Member, a “Member” and, collectively, the “Members”).

RECITALS

WHEREAS, (i) the Company was initially formed on December 12, 2022 by the filing of a Certificate of Formation with the Delaware Secretary of State, and (ii) in connection therewith, the Company’s original member adopted and entered into that certain Limited Liability Company Agreement of the Company, dated as of December 12, 2022 (the “Original Agreement”), to, among other things, govern the operations and management of the Company and the relationship between or among the member(s) of the Company and the Company;

WHEREAS, the Company and the Company’s original member amended and restated the Original Agreement and adopted and entered into that certain Amended and Restated Limited Liability Agreement of the Company, dated as of November 6, 2024 (the “A&R Operating Agreement”) to, among other things, replace and supersede the Original Agreement and govern the operations and management of the Company and the relationship between or among the member(s) of the Company and the Company;

WHEREAS, (i) on the Effective Date, the Company was converted from a Delaware limited liability company to a Nevada limited liability company (the “Conversion”) pursuant to (x) the certificate of conversion filed with the Delaware Secretary of State and (y) the articles of conversion and articles of organization filed with the Nevada Secretary of State, and (ii) in connection therewith, the Current Member desires to adopt and enter into this Agreement in order to, among other things, govern the operations and management of the Company and the relationship between or among the Members and the Company from and after the Effective Date.

NOW, THEREFORE, in consideration of the foregoing recitals and the representations, warranties, covenants and agreements set forth in this Agreement, and intending to be legally bound by this Agreement, the Current Member adopts and enters into this Agreement and agrees as follows:

1. Recitals Incorporated; Continuation. The foregoing recitals are expressly incorporated by reference into and made a part of this Agreement. As a result of the Conversion, the Company continues to exist in the form of a Nevada limited liability company. At the effective time of the Conversion on the Effective Date, this Agreement replaces and supersedes the A&R Operating Agreement, and the A&R Operating Agreement shall be of no further force and effect.

2. Purpose. The Company is formed for the object and purpose of, and the nature of the business to be conducted and promoted by the Company is, engaging in any lawful act or activity for which limited liability companies may be formed under Chapter 86 of the Nevada Revised Statutes (“NRS”), as amended from time to time (the “Act”).

3. Powers. In furtherance of its purposes, but subject to all of the provisions of this Agreement, the Company shall have the power and is hereby authorized to do all things and engage in all such activities as may be necessary, convenient or incidental to the conduct of the business of the Company, and to have and exercise all of the powers and rights conferred upon limited liability companies formed pursuant to the Act.

4. Principal Business Office. The principal business office of the Company shall be located at 222 Berkeley Street, 5th Floor, Boston, Massachusetts 02116, or at such other location as may hereafter be determined by the Board of Directors (as defined below).

5. Registered Office. The address of the registered office of the Company in the State of Nevada is the address of the Company’s registered agent, and the name and address of the registered agent of the Company in the State of Nevada

is CT Corporation System, 701 S. Carson Street, Suite 200, Carson City, NV 89701, or such other registered agent or registered office in the State of Nevada as any Director may from time to time designate.

6. Members.

(a) **Unit Register.** The names, mailing addresses, capital contribution amounts and Units (as defined below) of the Members shall be reflected in a unit register attached to this Agreement as Schedule A, as updated by the Company from time to time in accordance with this Agreement (as so updated, the “Unit Register”).

(b) **No Separate Class Vote to Effect a Change of Control Transaction.** Irrespective of any provision of NRS 86.296, a Change of Control Transaction shall not require approval by any separate class or group of Members unless otherwise set forth in this Agreement. “Change of Control Transaction” means each of the following: (a) a merger or consolidation in which (i) the Company is a constituent party or (ii) a subsidiary of the Company is a constituent party and the Company issues Units or other equity interests of the Company pursuant to such merger or consolidation, except any such merger or consolidation involving the Company or a subsidiary in which the equity interests of the Company outstanding immediately prior to such merger or consolidation continue to represent, or are converted into or exchanged for equity interests that represent, immediately following such merger or consolidation, a majority, by voting power, of the equity interests of (1) the surviving or resulting entity; or (2) if the surviving or resulting entity is a wholly owned subsidiary of another entity immediately following such merger or consolidation, the parent entity of such surviving or resulting entity and (b) the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Company or any subsidiary of the Company of all or substantially all the assets of the Company and its subsidiaries taken as a whole, or the sale or disposition (whether by merger, consolidation or otherwise) of one or more subsidiaries of the Company if substantially all of the assets of the Company and its subsidiaries taken as a whole are held by such subsidiary or subsidiaries, except where such sale, lease, transfer, exclusive license or other disposition is to a wholly owned subsidiary of the Company.

(c) **Admission of Additional Members.** Subject to the terms of this Agreement, any individual or entity acceptable to the Board of Directors may become a Member of the Company by the purchase of new Units for such consideration as the Board of Directors shall determine in accordance with the terms of this Agreement (each, an “Additional Member”). Each Additional Member shall: (a) agree to be bound by the provisions of this Agreement; (b) execute and deliver such documents as the Board of Directors deems appropriate in connection therewith; and (c) contribute to the Company the agreed upon Capital Contribution in exchange for the Units purchased by such Additional Member. Each Additional Member shall have all the rights and obligations of a Member holding the class and series of Units purchased by such Additional Member as specified on the Unit Register. The admission of Additional Members shall not be a cause for dissolution of the Company. Upon the admission of any Additional Members pursuant to this Section, the Unit Register shall be appropriately amended.

7. Limited Liability. Except as otherwise provided by the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company, and the Members shall not be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Member of the Company.

8. Management.

(a) Board of Directors.

(i) **Generally.** Except as specifically set forth in this Agreement or as required by the Act, the Members hereby delegate all power and authority to manage, bind and act on behalf of, the Company to directors of the Company (each, a “Director”) subject to and in accordance with the terms of this Agreement. Such Directors shall constitute the “Board of Directors” and such term may be used in this Agreement to refer to such Directors, acting together. Such term is used for convenience only and is not intended by the parties to confer to the Board of Directors any additional power or authority other than that expressly and specifically conferred pursuant to and in accordance with the terms of this Agreement and the Act. In furtherance of the foregoing, except to the extent modified by the Act, the Board of Directors shall have the powers and authority of the board of directors of a corporation organized and existing under the NRS Chapter 78. In managing the business and affairs of the Company and in exercising their powers, the Board of Directors, or any committee thereof created by the Board of Directors, shall act by voting at meetings or by written consents in accordance with NRS

Chapter 78 as if the Board of Directors were a board of directors of a corporation organized under NRS Chapter 78. The Board of Directors may adopt such rules and procedures for the management of the Company not inconsistent with this Agreement or the Act. Any power not otherwise delegated pursuant to this Agreement or by the Board of Directors in accordance with the terms of this Agreement shall remain with the Board of Directors. No action on behalf of the Company may be taken without the prior approval of the Board of Directors; provided, however, the Board of Directors may delegate the power and authority to act on behalf of the Company to any committee of the Board of Directors or any officer of the Company. For purposes of this Operating Agreement, any reference to “Directors” shall be deemed to refer to the “Managers” of the Company as that term is defined in NRS 86.071. All duties, rights, powers, and obligations attributed to “Directors” under this Agreement shall be interpreted as duties, rights, powers, and obligations of the “Managers” pursuant to NRS Chapter 86. The use of corporate terminology is for convenience only and shall not be construed to alter the statutory framework applicable to Managers of a Nevada limited liability company.

(ii) **Composition of Board of Directors.** The Board of Directors shall initially consist of up to five Directors. At least 35% of the Directors shall be “Public Directors” consistent with the guidance provided by the U.S. Commodity Futures Trading Commission (“CFTC”) regarding “Public Directors.” The authorized number of Directors of the Company may be increased or decreased (provided that the percentage of Public Directors meets or exceeds 35% of the Board of Directors at all times) from time to time upon consent of the Members holding a majority of the then-outstanding Units (the “Majority Members”).

(iii) **Election of Directors.** The holders of record of the Units, voting together as a single class, shall be entitled to elect the members of the Board of Directors. The members of the Board of Directors shall be so elected (A) at any meeting of Members or (B) by written consent of the Members. Each member of the Board of Directors so elected shall hold office until his or her successor is duly elected and qualified, or until his or her earlier death, resignation or removal. At any meeting held for the purpose of electing a member of the Board of Directors: (1) the presence in person or by proxy of the holders of a majority of the then outstanding Units shall constitute a quorum for the purpose of electing such member of the Board of Directors; and (2) members of the Board of Directors shall be elected by the affirmative vote of the majority of votes cast at the meeting. Members of the Board of Directors may also be elected by written consent of the Majority Members, in lieu of a meeting of the Members.

(iv) **Vacancies.** Any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal or other causes and any newly created Director seats resulting from any increase in the number of Directors shall be filled by vote or consent of the Majority Members. Any Director elected in accordance with the preceding sentence shall hold office until such Director’s successor has been duly elected and qualified pursuant to this Agreement and the Act, or until his or her earlier death, resignation or removal.

(v) **Resignation or Removal of Directors.**

(1) Upon written notice to the Members, any Director may resign as such at any time.

(2) The Majority Members may remove a Director for any reason or no reason and with such notice, if any, as they specify in a termination notice delivered to such Director.

(3) Upon the death, resignation or removal of a Director (i) who was acting as the sole Director or (ii) a Public Director that would result in less than 35% of the Board of Directors being Public Directors, the Majority Members shall elect a new Director to replace the sole Director or Public Director, as applicable.

(vi) **Board of Director Committees.**

(1) The Board of Directors may, by resolution, designate from among the Directors one or more committees of the Board (each, a “Committee”), each of which shall be comprised of one or more Directors. Any such Committee, to the extent provided in the resolution forming such Committee, shall have and may exercise the authority of the Board of Directors. The Board of Directors may dissolve any Committee at any time (other than the ROC (as defined below)).

(2) Except as provided in the resolution initially establishing such Committee, the presence in person of a number of Directors equal to a majority of the total number of Directors comprising the applicable

Committee shall constitute a quorum for the resolution adopting such Committee. Except as otherwise provided in the resolution adopting such Committee, actions of any Committee shall be made and determined in accordance with the provisions set forth above for actions of the Board of Directors. Notice of Committee meetings shall be given to each member of the Committee in the same manner as for meetings of the Board of Directors.

(3) Notwithstanding anything to the contrary set forth in the preceding clauses “(1)” and “(2),” the Board of Directors shall at all times have a Regulatory Oversight Committee (“ROC”), which shall have the powers and responsibilities set forth or a ROC provided by the applicable CFTC guidance for ROCs governing designated contract markets. The ROC shall consist exclusively of all of the Public Directors.

(vii) **Fiduciary Duties.** Subject to the further provisions of this Section, in matters relating to the business and internal affairs of the Company of which the Board of Directors has decision-making authority, each Director (in its capacity as such) shall act in good faith and in a manner which it reasonably believes to be in or not opposed to the best interests of the Company and shall be subject to the fiduciary duties (including the duties of care and loyalty), in each case, to the same extent as such duties would apply to a director were the Company a corporation incorporated under NRS Chapter 78.

(b) **Officers.**

(i) **Generally.** The Board of Directors may, from time to time as it deems advisable, appoint officers of the Company (the “Officers”) and assign in writing titles (including, without limitation, Chief Executive Officer, President, Chief Financial Officer, Vice President, Treasurer, Secretary, and Chief Regulatory Officer) to any such individual and delegate any powers and duties to such Officers. Unless the Board of Directors decides otherwise, if the title is one commonly used for officers of a corporation formed under NRS Chapter 78, the assignment of such title shall constitute the delegation to such individual of the authorities and duties that are normally associated with that office. Any two or more offices may be held by the same individual. New offices may be created and filled by the Board of Directors. Notwithstanding anything to the contrary set forth in this Agreement or otherwise, the Company at all times shall have a Chief Regulatory Officer.

(ii) **Removal; Vacancies.** All Officers shall hold office at the pleasure of the Board of Directors and until their successors shall have been duly appointed and qualified, unless sooner removed. Any Officer may be removed at any time by (i) the Majority Members for any reason or no reason and with such notice, if any, as they specify in a termination notice delivered to such Officer, and (ii) the Board of Directors; provided that, in the case of removal by the Board of Directors, the removal or replacement of an Officer shall require the approval of Directors constituting not less than a majority of the authorized number of Directors, whether such action is taken at a meeting or by written consent. If the office of any Officer becomes vacant for any reason, the vacancy may be filled by either (i) the Majority Members or (ii) the Board of Directors.

(iii) **Fiduciary Duties.** Each Officer shall have the same fiduciary duties that such Officer would have if the Company were a corporation incorporated under NRS Chapter 78 and such Officer were a corresponding officer of that corporation.

(c) **Representative Capacity.** Any Director or Officer shall be authorized (i) to form and sign any documents relating to the formation of any entity in which the Company will own any equity interest and (ii) to attend, act and vote, or designate another Officer or an agent of the Company to attend, act and vote, at any meeting of the equity holders of such entity or to take action by written consent in lieu thereof. Such Director, Officer or agent, at any such meeting or by such written consent, shall possess and may exercise on behalf of the Company any and all rights and powers incident to the ownership of such interest.

9. Capital Contributions and Units.

(a) **Capital Contributions and Units.** The Members made initial capital contributions to the Company in the amounts of cash and the fair market value of other property listed opposite their names in the Unit Register under the heading “Initial Capital Contributions” and have been issued the “Units” representing member’s interests of the Company listed opposite their names on the Unit Register under the heading “Units”. As of the Effective Date, One Thousand (1,000) Units shall be authorized for issuance by the Company. Such Units shall be available for issuance as may be authorized by

the Board of Directors from time to time. The Board of Directors shall have the authority to issue Units in addition to those issued as of the date hereof (including, without limitation, Units which are subject to vesting or other substantial risks of forfeiture) and to fix and determine the relative rights, preferences, powers, privileges and restrictions of such Units, if applicable, without any further action on the part of the Members or any other party. The Board of Directors shall have the authority to determine the capital contributions, if any, required to be made in connection with the issuance of new Units. No Member will be required to make any additional capital contributions.

(b) **Certificates.** The Units owned by the Members shall be recorded on the Unit Register and, initially, shall not be represented by physical certificates; provided that the Board of Directors is authorized in its sole discretion to issue to the Members certificates representing their respective ownership of the Units.

(c) **Profits Interests and Safe Harbor Election.**

(i) The Board of Directors may designate certain Units as “profits interests” within the meaning of Internal Revenue Service Revenue Procedures 93-27 and 2001-43 (“Profits Interests”), and this Agreement will be interpreted and applied consistent with such designation. With respect to any such Profit Interest, the holder of such Unit will be entitled to share in distributions in excess of the amount originally paid for such Unit only to the extent set forth in an applicable agreement between such holder and the Company, which agreement will designate a dollar amount of the aggregate distributions that must be paid pursuant to **Section 11(a)** with respect to each Unit (other than Profits Interests issued contemporaneously or after the issuance of such Profits Interests) outstanding on the date of issuance of such Profits Interest before any distributions (other than distributions made pursuant to **Section 11(c)**) will be paid with respect to such Profits Interest (such designated value, the “Distribution Hurdle”). The Board of Directors will consult with the Company’s counsel or tax advisors to determine the appropriate Distribution Hurdle for each Profits Interest issued by the Company and will reflect the applicable Distribution Hurdle for each Profits Interest in such agreement as of the date such Profits Interest is granted. Each holder of Profits Interests, whether or not vested, will be treated as a partner of the Company for U.S. federal income tax purposes with respect to such Profits Interests. The Board of Directors will have the discretion to make any determinations required under this Section, including as to the fair market value of the Company’s assets, the amount of the Company’s liabilities, the extent to which, if any, Profits Interests will be excluded from participating in distributions on account of this Section, and how distributions may be modified in order to achieve the objectives of this Section.

(ii) To the extent provided by applicable final Treasury Regulations or Internal Revenue Service guidance, the Members elect a safe harbor to treat the fair market value of such Units as equal to the liquidation value of such Units, which will be zero, and authorize and direct the Company to make the safe harbor election described in the proposed Revenue Procedure set forth in Internal Revenue Service Notice 2005-43. The Company and each Member agree to comply with the requirements of the safe harbor with respect to such Units while the safe harbor election remains effective. If such proposed revenue procedure (or a substantial equivalent) is promulgated in final, effective form, the Board of Directors will (without the need for further action by the Members) have all necessary authority under this Agreement to give effect to the intention set forth in the preceding sentences (including the authority to make any applicable tax election on behalf of the Company and the Members).

(d) **Voting.** Except as otherwise provided in this Agreement, the Members will be entitled to vote based on the respective number of Units held by each of them; each Unit will entitle the holder to one vote per Unit. Notwithstanding the foregoing, Units that are Profits Interests shall be non-voting, and any Member whose Units consists solely of Profits Interests shall not have any votes as a Member of the Company except as required by law.

10. Capital Accounts; Allocation of Profits and Losses.

(a) **Capital Accounts.** A capital account for each Member shall be established and maintained in accordance with Section 704(b) of the Internal Revenue Code of 1986, as amended (the “Code”), and the regulations promulgated thereunder. The Company’s net profit, net loss and items thereof shall be allocated to the capital accounts of the Members on an annual basis, at the end of each calendar year, unless otherwise required by law or deemed advisable by the Board of Directors (a period for which such allocations are made is referred to herein as an “Accounting Period”).

(b) **Allocations of Profit and Loss.** Subject to the provisions of **Section 10(c)** of this Agreement, and after all capital contributions and distributions for each Accounting Period have been reflected in the Members’ capital

accounts, the net profit or net loss, if any, for each Accounting Period shall be credited to such Members' capital accounts in a manner such that as of the end of such Accounting Period, each Member's capital account shall be equal to the respective net amounts which would be distributed to them or for which they would be liable to the Company under this Agreement, determined as if the Company were to liquidate all of the assets of the Company for an amount equal to their carrying value and distribute the proceeds of such liquidation in the manner described in **Section 11**. For purposes of calculating a Member's capital account under this **Section 10(b)** and **Section 11(c)**, any amounts such Member is obligated to restore (or deemed obligated to restore pursuant to the Treasury Regulations under Section 704(b) of the Code) shall be deemed to increase such Member's capital account balance.

(c) **Regulatory and Special Allocations.** Notwithstanding the allocations set forth in **Section 10(b)**, the Company's net profit, net loss and items thereof shall be allocated to the Members in the manner and to the extent required by the Treasury Regulations under Section 704 of the Code, including without limitation, the provisions thereof dealing with minimum gain chargebacks, partner minimum gain chargebacks, qualified income offsets, partnership nonrecourse deductions, partner nonrecourse deductions, and the provisions dealing with deficit capital accounts in Treasury Regulations Sections 1.704-2(g)(1), 1.704-2(i)(5), and 1.704-1(b)(2)(ii)(d).

(d) **Tax Allocations.** The income, gains, losses, deductions and expenses of the Company shall be allocated, for federal, state and local income tax purposes, among the Members in accordance with the allocation of such income, gains, losses, deductions and expenses among the Members for purposes of computing their capital accounts, except that if any such allocation is not permitted by the Code or other applicable law, the Company's subsequent income, gains, losses, deductions and expenses shall be allocated among the Members for tax purposes to the extent permitted by the Code and other applicable law, so as to reflect as nearly as possible the allocation set forth herein in computing their capital accounts. Notwithstanding the previous sentence, such tax items shall be allocated among the Members in a different manner to the extent required by Code Section 704(c) and the Treasury Regulations thereunder (dealing with contributed property), Treasury Regulations Sections 1.704-1(b)(2)(iv)(f) (dealing with property having a book value different than its tax basis), and 1.704-1(b)(4)(ii) (dealing with tax credit items), as determined by the agreement of the contributing Member and the Board of Directors. Allocations pursuant to this **Section 10(d)** are solely for purposes of federal, state and local taxes and shall not affect, or in any way be taken into account in computing, any Member's capital account or share of profits, losses, other items or distributions pursuant to any provisions of this Agreement.

11. Distributions.

(a) **Frequency and Manner.** Subject to **Section 11(c)** below, distributions may be made to the Members at the times and in the amounts determined by the Board of Directors in its sole discretion. Except as otherwise provided herein, distributions shall be made to each of the Members pro rata in accordance with the number of Units owned by such Member as set forth on the Unit Register. Notwithstanding the foregoing, with respect to Units that are Profits Interests, the amounts otherwise distributable in respect of such Profits Interests pursuant to this **Section 11(a)** shall be subject to the Distribution Hurdle applicable to such Unit.

(b) **Limitation.** No distribution shall be made to a Member to the extent it would cause such Member to have a deficit capital account.

(c) **Tax Distributions.** Unless prohibited by the Act and only to the extent the Company has Distributable Cash, the Company shall make the following distributions ("**Tax Distributions**") on or before April 12, June 12, September 12, and December 31 of each year: to each Member, an amount equal to: (i) the product of (y) any allocations of net taxable income made to the Member during the preceding fiscal quarter, multiplied by (z) 40%, less (ii) any distributions made during the fiscal year to the Member pursuant to **Section 11(a)**. The Company will make Tax Distributions to the Members pro rata in accordance with the relative amounts due to the Members under this **Section 11(c)**. Notwithstanding anything to the contrary in this Agreement, all Tax Distributions to a Member shall count toward and reduce dollar-for-dollar amounts otherwise distributable to such Member pursuant to **Section 11**. "**Distributable Cash**" means for any period the excess, if any, of (i) all amounts actually paid to and received by the Company during such period from customers of the Company as determined by the Board of Directors acting reasonably and in good faith over (ii) the sum of total cash disbursements for operating expenses made by the Company for such period and the amount, if any, of such cash receipts that the Board of Directors determines are to be reserved for the needs of the Company's business or activities acting reasonably and in good faith.

12. Company Representative.

(a) Unless and until another individual or entity is so designated by the Board of Directors or the Majority Members, for each taxable year of the Company subject to the Revised Partnership Audit Procedures (as defined below), the Chief Financial Officer of the Company shall serve as the “partnership representative” of the Company within the meaning of Code Section 6223, as amended by the BB Act (as defined below) (the “Company Representative”). With respect to any period in which any non-individual is Company Representative, the Board of Directors shall appoint an individual (the “Designated Individual”) through whom Company Representative will act for all purposes of the Revised Partnership Audit Procedures. All references to Company Representative herein will include any actions by the Designated Individual on behalf of Company Representative and/or the Company in that individual’s or entity’s capacity as Designated Individual. Each Member hereby agrees to these designations of Company Representative and Designated Individual, and will take all actions as are necessary or convenient to effect the appointment of a Company Representative and Designated Individual that has been selected in accordance with this Section. Company Representative and Designated Individual may expend Company funds for professional services and costs associated with their respective roles as such.

(b) Company Representative may resign at any time by written notice to the Board of Directors, effective at either the time of the resignation or at a later time as stated in the written notice. Upon an affirmative vote of the Majority Members or a determination of the Board of Directors, the designation of Company Representative or Designated Individual may be revoked. Upon such a revocation, the Board of Directors shall notify in writing of such revocation each of Company Representative and the Internal Revenue Service. The Company shall follow all procedures listed in Code Section 6223 and the Regulations thereunder with respect to any resignation or revocation of Company Representative or Designated Individual. Upon a resignation or revocation of a Company Representative or Designated Individual, the Board of Directors shall designate a new Company Representative or Designated Individual (as applicable) within two (2) business days of any resignation or revocation.

(c) Company Representative (and Designated Individual, if any) shall not take any material action in their respective capacity as such without the approval of the Board of Directors. In the event that Company Representative or Designated Individual should take any material action without the Board of Directors’ approval or contrary to the Board of Directors’ direction, then Company Representative’s or Designated Individual’s (as applicable) status as such will be immediately revoked.

(d) Notwithstanding the foregoing, Company Representative shall (i) inform each Member of all significant matters relating to taxes of the Company (including any audits or similar proceeding or any judicial proceeding (collectively, “Tax Contests”) that come to Company Representative’s attention (and to forward copies of related significant written communications) on or before the tenth (10th) business day after becoming aware thereof, (ii) consider in good faith any comments and preferences provided by each Member in connection with any such Tax Contests, and (iii) seek to cause the Company to provide any Member, upon request and at such Member’s cost, access to all reasonably available accounting and tax information, taxing authority correspondence, workpapers, and schedules related to the Company that are not subject to any work product or other privileges that the Board believes would be jeopardized by such access.

(e) Company Representative shall consult in good faith with the Members at least twenty (20) business days before extending the statute of limitations, filing any election under Section 6221(b) or Section 6226 of the Code, filing a request for administrative adjustment, or entering into any settlement agreement relating to any Company items of income, gain, loss, or deduction. Company Representative shall provide each Member an opportunity to review a proposed settlement agreement with the Internal Revenue Service or similar authority for a period of at least ten (10) business days before entering into such agreement.

(f) For any taxable year of the Company for which the Company does not make an election under Section 6221(b) of the Code:

(i) If the Company receives a notice of proposed partnership adjustment (“NOPPA”) under Section 6231 of the Code that contains a proposed imputed underpayment, then (i) Company Representative shall make a timely request to the Internal Revenue Service for a modification of the proposed imputed underpayment pursuant to Sections 6225(c) and 301.6225-2 of the Code (or any successor Regulations or other provisions) if such modification would reduce the amount of the proposed adjustment set forth in the NOPPA and (ii) the Members shall take such reasonable actions requested by Company Representative with respect to the request for modification.

(ii) The Board shall determine whether the Company will make an election to have Section 6226 of the Code apply and will so direct Company Representative.

(iii) If the Board determines that the Company will not make an election under Section 6226 of the Code, then any “imputed underpayment” (as determined in accordance with Section 6225 of the Code) or any partnership adjustment that does not give rise to an imputed underpayment will be apportioned among the Members of the Company for the fiscal year in which the adjustment is finalized in such manner as may be necessary (as determined by Company Representative in good faith) so that, to the maximum extent possible, the tax and economic consequences of the partnership adjustment and any associated interest and penalties are borne by the Members based upon their respective interests in the Company for the reviewed year. Any tax payments (including interest, penalties, and additions to tax) made by the Company on behalf of a Member will be treated, in the Board of Directors’ discretion, either as a distribution to such Member, or as an expense incurred by the Company on behalf of such Member for which such Member shall promptly reimburse the Company upon receipt of notice thereof from the Company.

(iv) If the Board of Directors determines that the Company will make an election under Section 6226 of the Code, then each Member agrees to cooperate in taking such actions as may be required to cause such election to be effective.

(g) Notwithstanding anything to the contrary in this Agreement, the Company, Company Representative, and each Member agree that their respective obligations to comply with this Section will survive any transfer of a member’s interest and the termination of the Company as a taxable partnership until the fifth (5th) anniversary of such transfer or termination. Accordingly, each individual or entity who ceases to be a Member shall, notwithstanding such transfer, (i) reimburse and indemnify the Company against any liability that would be attributed to such individual or entity under this Section; and (ii) be entitled to all the rights and protections afforded a Member under this Section, in each case of the foregoing clauses (i) and (ii), with respect to Tax Contests of fiscal years during which such individual or entity was a Member of the Company; provided that Company Representative will not be obligated to provide an individual or entity any non-public information regarding the Company for any fiscal year or portion thereof of the Company during which such individual or entity is not a Member.

(h) The Members and Company Representative shall cooperate, in good faith, on any occasion that the Internal Revenue Service issues additional written guidance or amendments are made to the BB Act and/or the Revised Partnership Audit Procedures.

(i) “BB Act” means Title XI of the Bipartisan Budget Act of 2015 (such Title XI, including the corresponding provisions of the Code impacted thereby, as the same may be amended from time to time). The “Revised Partnership Audit Procedures” means the provisions of Subchapter C of Chapter 63 of Subtitle F of the Code, as amended by the BB Act (together, where the context requires, any subsequent amendments thereto, the Regulations promulgated or proposed thereunder, published administrated interpretations thereof, and any corresponding provisions of state or local income tax law). Any reference in this Section to a section of the Code is to such section as amended by the BB Act, and any corresponding provision of state or local law, as the same may be amended from time to time.

13. Confidentiality.

(a) Each Member shall (i) treat and hold as confidential any proprietary information of the Company and its subsidiaries that is provided to the Member by the Company and is not already generally available to the public or that does not become generally available after the date of this Agreement without any violation by such Member of his, her or its obligations hereunder (the “Confidential Information”), and (ii) refrain from using any of the Confidential Information except in the ordinary course operation (consistent with past custom and practice) of the Company and its subsidiaries (solely to the extent that such Member is involved in such activities as a Director, Officer, employee or independent contractor of the Company or any of its subsidiaries); provided, however, that nothing in this Section shall prevent any Member from disclosing to any and all parties the tax structure and tax aspects of the Company and its transactions. In the event that a Member is requested or required by applicable law or regulation or by oral question or request for information or documents in any legal or regulatory proceeding, interrogatory, subpoena, civil investigative demand or similar process to disclose any Confidential Information, such Member shall notify the Company promptly of the request or requirement so that the Company may seek an appropriate protective order or waive compliance with the provisions of this Section. If, in the absence of a protective order or the receipt of a waiver hereunder, a Member is, on the advice of counsel, compelled

to disclose any Confidential Information to any tribunal or else stand liable for contempt, such Member may disclose the Confidential Information to the tribunal; provided that such Member shall use commercially reasonable efforts to obtain, at the request and expense of the Company, an order or other assurance that confidential treatment shall be accorded to such portion of the Confidential Information required to be disclosed as the Company shall designate.

(b) Each Member acknowledges and agrees that, in the event of a breach or threatened breach by such Member of any of the provisions of this Section, monetary damages shall not constitute a sufficient remedy. Consequently, in the event of any such breach or threatened breach, the Company may (and shall be entitled to), in addition to other rights and remedies existing in their favor, apply to any court of law or equity of competent jurisdiction for specific performance and/or injunctive or other relief in order to enforce or prevent any violations of the provisions of this Section, in each case without the requirement of posting a bond or proving actual damages.

14. Other Business. Subject to Sections 8(a)(vii) and 8(b)(iii) and any other definitive agreement between such persons or entities and the Company, (i) the Members, Directors, Officers and any individual or entity affiliated with the Members, Directors and Officers may engage in or possess an interest in other business ventures (unconnected with the Company) of every kind and description, independently or with others, and (ii) the Company shall not have any rights in or to such independent ventures or the income or profits therefrom by virtue of this Agreement.

15. Indemnification.

(a) **Indemnification of Members, Directors and Officers.** The Company shall, to the fullest extent permitted by Nevada law, indemnify any individual or entity who is or was a Member, Director or Officer of the Company or is or was a Member, Director or Officer of the Company serving at the Company's request as a director, member, manager, officer, employee, or agent of another corporation, partnership, limited liability company, joint venture, trust, or other entity (each such person, an "Indemnatee") against expenses, including without limitation attorneys' fees, costs, expenses, judgments, fines, and amounts paid in settlement (collectively, "Expenses"), actually and reasonably incurred by the Indemnatee in connection with any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, whether or not an action, suit or proceeding by or in the right of the Company, to which the Indemnatee is, was, or is threatened to be made a party by reason of being an Indemnatee.

(b) **Indemnification Against Expenses.** The Expenses of Indemnitees must be paid or reimbursed by the Company or through insurance purchased and maintained by the Company or through other financial arrangements made by the Company, as they are incurred and in advance of the final disposition of the action, suit, proceeding or claim described in **Section 15(a)**, to the fullest extent permitted by Nevada law.

(c) **Indemnification of Employees and Other Persons.** The Company may, by action of its Board of Directors and to the extent provided in such action, indemnify employees and other persons as though they were Indemnitees.

(d) **Insurance.** The Company may purchase and maintain insurance or make other financial arrangements on behalf of any Indemnatee for any liability asserted against him or her and liability and expenses incurred by him or her in his or her capacity as a Member, Director, Officer, employee or agent, or arising out of his or her status as such, whether or not the Company has the authority to indemnify him or her against such liability and expenses.

(e) **Non-Exclusivity of Indemnification Rights.** The rights of indemnification set out in this **Section 15** shall be in addition to and not exclusive of any other rights to which any Indemnatee may be entitled under the articles of organization of the Company and any other agreement with the Company, any action taken by the Members or disinterested Directors, or otherwise. The indemnification provided under this **Section 15** shall inure to the benefit of the heirs, executors, and administrators of an Indemnatee.

(f) **Amendment.** The provisions of this **Section 15** may be amended as provided in **Section 25**; provided, however, no amendment or repeal of such provisions which adversely affects the rights of a Member, Director or Officer under this **Section 15** with respect to his or her acts or omissions prior to such amendment or repeal, shall apply to him without his or her consent.

16. Assignments. A Member may not assign in whole or in part his, her or its Units in the Company without the prior approval of the Board of Directors and any other votes or consents required by this Agreement. If a Member transfers any Units in the Company with the prior approval of the Board of Directors, the transferee shall be admitted to the Company as a Member upon its execution of an instrument signifying its agreement to be bound by the terms and conditions of this Agreement. Immediately following a Member's transfer of all of the Member's Units in the Company, the transferor Member shall cease to be a member of the Company. In such event, the Company shall not dissolve. Notwithstanding the foregoing, a Member may assign in whole or in part his, her or its Units in the Company without the prior approval of the Board of Directors if such Units are being transferred to an affiliate or a living trust for the benefit of the Member and his or her family members and the transferee executes an instrument signifying its agreement to be bound by the terms and conditions of this Agreement.

17. Information Rights. Each Member's information and inspection rights in the Company shall be limited to the rights such Member would have as a stockholder of a corporation under NRS 78.105 and NRS 78.257; provided that Members whose Units consist solely of Profits Interests shall not be entitled to any information or inspection rights in the Company.

18. Dissolution.

(a) Except as otherwise set forth in this Agreement, the Company shall dissolve, and its affairs shall be wound up solely upon (i) the Board of Directors' determination to dissolve the Company, (ii) the initial Member's death; provided he or she is the sole Member at such time and if his or her heirs or executor determine to dissolve the Company; or (iii) the entry of a decree of judicial dissolution of the Company pursuant to NRS 86.495.

(b) In the event of dissolution, the Company shall conduct only such activities as are necessary to wind up its affairs (including the sale of the assets of the Company in an orderly manner), and, subject to NRS 86.521, the assets of the Company shall be distributed to the Members in accordance with **Section 11(a)**.

19. Waiver of Action for Partition. Each Member irrevocably waives during the term of the Company any right that it may have to maintain any action for partition with respect to the Company property.

20. Withdrawal of Member; No Dissolution. If a Member transfers all of its Units and the transferee of such Units is admitted as a Member pursuant to this Agreement, such individual or entity shall be admitted to the Company as a Member effective on the effective date of the transfer or such other date as may be specified when the Member is admitted, and, immediately following such admission, the Member effecting the transfer shall cease to be a Member of the Company. Upon the resignation or withdrawal from the Company of the Member effecting the transfer, the resigning or withdrawing Member shall not be entitled to any distributions (including any distributions under NRS 86.331) from and after the date of such resignation or transfer. The withdrawal of a Member by transfer of all or any of its Units shall not dissolve the Company, and the Company shall be continued.

21. Separability of Provisions. Each provision of this Agreement shall be considered separable and if for any reason any provision or provisions herein are determined to be invalid, unenforceable or illegal under any existing or future law, such invalidity, unenforceability or illegality shall not impair the operation of or affect those portions of this Agreement which are valid, enforceable and legal.

22. Counterparts. This Agreement may be executed in two or more counterparts and by electronic signatures (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, Uniform Electronic Transactions Act or other applicable law), each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

23. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and supersedes all prior understandings or agreements between the parties.

24. Governing Law. This Agreement shall be governed by, and construed under, the laws of the State of Nevada (without regard to conflict of laws principles), all rights and remedies being governed by said laws.

25. Amendments. This Agreement may not be modified, altered, supplemented or amended except by the vote or consent of the Majority Members.

26. Conversion to a Corporation. If the Board of Directors determines that it would be desirable to undertake a Corporation Conversion (as defined below), the Board of Directors may do so without otherwise obtaining the consent of the Members so long as such Corporate Conversion is structured in the most tax efficient manner as is practicable under the circumstances and the Members receive, in exchange for their Units, shares of capital stock of a corporation having substantially the same relative rights and preferences as to distributions and the same voting and transfer rights, subject in each case to any modifications determined to be appropriate by the Board of Directors as a result of the conversion to corporate form, as are set forth in this Agreement. By becoming parties to this Agreement, all Members have consented to a Corporate Conversion and each of the Members agrees to, and will cause its affiliates to, cooperate with such Corporate Conversion and take such actions and execute such documents as the Board of Directors may reasonably request in order to consummate any Corporate Conversion; provided, however, the relative interests of the Members shall not be affected by such transaction and no Members shall be required to assume any liability or obligation as a result of such transaction that is different or disproportionate from any other Members. “Corporation Conversion” means a transaction generally qualifying for non-recognition under the Code pursuant to which all of the Units or all or substantially all of the assets of the Company are transferred to a corporation either directly or through (i) a merger or conversion of the Company into a corporation or (ii) any other transaction that results in all of the Units or all or substantially all of the assets of the Company being held directly or indirectly by a corporation.

[Signature Page Follows]

The undersigned, intending to be legally bound hereby, has duly executed this Operating Agreement, effective as of the Effective Date.

RAILBIRD TECHNOLOGIES LLC,
a Nevada limited liability company

By: _____
Name:
Title:

SCHEDULE A

RAILBIRD EXCHANGE, LLC

UNIT REGISTER

Member(s)' Name(s) and Address(es)	Initial Capital Contribution	Units Owned
Railbird Technologies LLC (as successor in interest to Railbird Technologies Inc.) 222 Berkeley Street, 5 th Floor Boston, Massachusetts 02116	Cash: \$100	1,000