ACTION BY WRITTEN CONSENT

OF

THE SOLE MEMBER

OF

RAHN MARINA LLC, BAHIA MAR SMI OPCO SERIES

May 31, 2022

The undersigned, being the sole member (the "Member") of Rahn Marina LLC, Bahia Mar SMI OpCo Series, a Delaware limited liability company (the "Company"), acting pursuant to Section 18-302(d) of the Delaware Limited Liability Company Act, hereby adopts, by this written consent, the following resolutions with the same force and effect as if they had been adopted by the Member and directs that this written consent be filed with the minutes of the proceedings of the Member:

Foreign-Trade Zone Operator Agreement

WHEREAS, it is proposed that the Company to enter into that certain Foreign-Trade Zone Operator Agreement (the "Agreement") with the CITY OF FORT LAUDERDALE (the "City"), a municipal corporation of the State of Florida;

WHEREAS, the Member has reviewed the Agreement and has determined that it is in the best interests of the Company for it to enter into the Agreement and consummate the transactions thereunder, and desires to approve the Company entering into the Agreement with the City, designate the individual and his title who is authorized to enter into and execute the Agreement on behalf of the Company, and verify and certify that the proper procedural steps and processes required to approve the Agreement were followed by the Company.

NOW, THEREFORE, BE IT RESOLVED, that the Company is hereby authorized and approved to enter into the Agreement and consummate the transactions thereunder; and further

RESOLVED, that Bryan Redmond, President of the Company, is, authorized and directed, in the name and on behalf of the Company, to enter into, execute and deliver the Agreement, with such changes therein as shall be approved by the person executing the same, and is authorized to enter into and deliver such other additional documents as may be required to consummate the transactions under the Agreement; and further

RESOLVED, that it is hereby confirmed, verified and certified that the proper procedural steps and processes required to approve the Agreement were followed by the Company; and further

General Authorizations

RESOLVED, that the authorized persons of the Company and the Member be, and each of them hereby is, authorized, empowered, and directed, in the name and on behalf of the Company, to take any and all actions and do any and all things, and to execute any and all certificates, agreements, instruments, notices and other documents, and to make or cause to be made any and all filings, as in the judgment of such officers shall be necessary or appropriate in order to fully carry out the intent and to accomplish the purposes of the foregoing resolutions, the authority for the taking of such actions and the execution and delivery of such certificates, agreements, instruments, notices and documents and the making of such filings to be conclusively evidenced thereby; and further

RESOLVED, that any person dealing with any officer of the Company or the Member in connection with any of the foregoing matters shall be conclusively entitled to rely upon the authority of such officer and by his or her execution of any document, agreement or instrument, the same shall be a valid and binding obligation of the Company enforceable in accordance with its terms; and further

RESOLVED, that any and all actions previously taken by the Company or any of its managers or officers in connection with the documents, transactions and actions contemplated by the foregoing resolutions hereby are adopted, ratified, confirmed and approved in all respects as and for the acts and deeds of the Company; and further

RESOLVED, that this Consent may be transmitted via any electronic means and an electronic signature of the undersigned shall be deemed an original signature for all purposes and have the same force and effect as a manually-signed original.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned, being the sole member of the Company, has executed this action by written consent as of the date set forth above.

MEMBER:

SMI TRS OPCO, LLC

By: _____
Name: Bryan Redmond
Title: President

DIVISION OF CORPORATIONS



Detail by Entity Name

Foreign Limited Liability Company
RAHN MARINA LLC, BAHIA MAR SMI OPCO SERIES

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Principal Address

17330 PRESTON ROAD, SUITE 220A
DALLAS, TX 75252

Mailing Address

17330 PRESTON ROAD, SUITE 220A
DALLAS, TX 75252

Registered Agent Name & Address

CORPORATION SERVICE COMPANY
1201 HAYS STREET
TALLAHASSEE, FL 32301

Authorized Person(s) Detail

Name & Address

Title MANAGER

REDMOND, BRYAN
17330 PRESTON ROAD, SUITE #220A
DALLAS, TX 75252

Title MANAGER

CARTER, RICHARD
17330 PRESTON RD., STE 220A
DALLAS, TX 75252

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2020	04/22/2020

2021 04/23/2021

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04/22/2020 – ANNUAL REPORT	View image in PDF format
10/08/2019 – Foreign Limited	View image in PDF format

Florida Department of State, Division of Corporations

FOREIGN-TRADE ZONE OPERATING AGREEMENT

BETWEEN

CITY OF FORT LAUDERDALE
FORT LAUDERDALE EXECUTIVE AIRPORT
FORT LAUDERDALE, FLORIDA
GRANTEE OF FTZ NO. 241

AND

RAHN MARINA LLC, BAHIA MAR SMI OPCO SERIES
OPERATOR
SITE 21
Private Magnet or Usage Driven Site

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FOREIGN TRADE ZONE OPERATOR AGREEMENT

This Foreign-Trade Zone Operator Agreement ("Agreement") made and entered into by and between the CITY OF FORT LAUDERDALE, a municipal corporation of the State of Florida, located at Foreign-Trade Zone No. 241, (hereinafter "Grantee" or "City"), and Rahn Marina LLC Bahia Mar SMI OPCO SERIES, a foreign limited liability company authorized to do business in the state of Florida having its principal address at 17330 Preston Road, Suite 220A, Dallas, Texas 75252 (hereinafter "Operator" or "Foreign-Trade Zone Operator"), dated this _____ day of _____, 2022.

WITNESSETH:

WHEREAS, the Foreign-Trade Zones Act of 1934, as amended, 19 U.S.C. §81, et seq. (hereinafter "the Act"), authorized the Foreign-trade Zones Board (hereinafter "FTZB") to grant to certain corporations the privilege of establishing, operating, and maintaining Foreign-Trade Zones in or adjacent to ports of entry under the jurisdiction of the United States of America; and

WHEREAS, Grantee applied for a grant to establish, operate, and maintain a Foreign-Trade Zone, and FTZB approved the grant of said application on the 6th day of April 2000, and established Foreign-Trade Zone No. 241 at the Fort Lauderdale Executive Airport and six (6) other qualified sites within Broward County, Florida (hereinafter "Zone No. 241" or "Zone"); and

WHEREAS, Grantee applied for a modification in the number and size of many of the Zone Sites and reorganization of the grant of authority under the Alternative Site Framework and was approved on April 30, 2013; and

WHEREAS, in 2016, subzone 241A was approved by under the minor boundary modification under the alternative site framework of the Foreign Trade Zones Board under the United States Department of Commerce; and

WHEREAS, in 2018, Foreign Trade Zone No. 241B was added to Foreign Trade Zone No. 241; and

WHEREAS, in 2021, the Grantee submitted an application for five (5) usage driven sites which applications were approved under the minor boundary modification under the alternative site framework of the Foreign Trade Zones Board under the United States Department of Commerce; and

WHEREAS, the usage driven sites were previously 'activated" by the U.S. Customs and Border Protection 'U.S. Customs"); and

WHEREAS, Operator presently desires to operate a certain parcel also known as Site No. 21 (hereinafter "Site"), and as reflected in Operator's Application said Site to be used for yacht and boat storage and exhibition, sea trials (with U. S. Customs approval) and warehousing and distribution of components and tools for the marine industry; and

WHEREAS, approval of the application forms the basis for this agreement that intends to govern the relationship between Grantee and Operator for operation of the Site; and

WHEREAS, Grantee deems it practicable to limit its participation in the everyday operations of the Site and to place the operation of Site #21 under the supervision of Operator, in accordance with the terms and conditions of this Agreement; and

WHEREAS, by Resolution No. 22-67, adopted at its April 5, 2022, meeting, the City Commission of Grantee approved the Zone Schedule for this Site; and

WHEREAS, by Resolution No. 14-69, adopted at its April 15, 2014, meeting, the City Commission of Grantee authorized to the City Manager to submit applications to activate new Foreign Trade Zone Sites and to execute Foreign Trade Zone Operator Agreements on behalf of the City.

NOW THEREFORE, IN CONSIDERATION of the payments, mutual covenants, and agreements contained herein, the parties hereto covenant and agree to the following terms and conditions as follows:

Section 1. Authority Granted / Accepted

1.1 Authority Granted and Representations. Operator represents and warrants that it is a corporation in good standing and authorized to conduct business in the State of Florida; that it is a financially sound corporation having the ability to meet all of the financial obligations required of a Foreign-Trade Zone Operator; that it is not in arrears in the payment of federal or state taxes; and that it has no outstanding judgments or claims that would interfere with its ability to conduct business in the Zone. In reliance on these representations and warranties, Grantee grants Operator the authority to use the Site located in Broward County, Florida, and more fully described in Exhibit "A", as a Foreign-Trade Zone subject to the terms, conditions, obligations, agreements, and restrictions and for the term hereof and for all extensions thereto. Operator represents and warrants it is the owner of the Site or holds a license or leasehold interest under which it has the authority to own, manage and operate the foreign trade zone.

1.2 Authority Accepted. Operator assumes all responsibility for the operation and management of the Site and agrees to operate and manage the Site in accordance with the U.S. Customs and Border Protection (hereinafter "U.S. Customs") and FTZB Regulations, the approvals in the Grant of Permit specific to Operator's site(s), all other applicable federal, state and local laws, rules and regulations, and in accordance with the terms and conditions of this Agreement.

1.3 Non exclusive Agreement. The authority granted herein is not exclusive and shall not be construed as any limitation upon the right of the Grantee, through its proper officers, and in accordance with applicable law, to grant to other persons or entities the rights, privileges or authority similar to or different from the rights, privileges

and authority herein set forth, in the same or other parts of Foreign-Trade Zone No. 241.

1.4 The appearance of Grantee's name on any forms or documents mentioned in or required by this Agreement shall not be construed or interpreted as a representation that Grantee has any knowledge, actual or constructive, of the quantity, character, status designation, identification, or time of admission, transfer or release of goods or merchandise into or from the Site. All information contained on any forms or documents are the representations of Operator only, and not of Grantee.

1.5 Incorporation by Reference. There is hereby incorporated by reference into this Agreement the regulations issued by the CBP, the FTZB and the Department of Commerce relating to the Foreign-Trade Zones Program and all applicable regulations referenced therein (hereinafter collectively referred to as the "Regulations"). Any subsequent amendment to the foregoing regulations and provisions or further regulations and provisions promulgated by the CBP or the Department of Commerce, which are applicable to either party or to the Zone or to the Site shall also be deemed to be incorporated herein and, as appropriate, will supersede the cited regulations and provisions. Such Regulations shall govern the manner in which Operator maintains and operates the Zone and Site. Any changes to the Regulations which impact the provisions of this Agreement will take precedence over provisions of this Agreement. The provisions herein pertain to the rights and obligations between Operator and Grantee and are supplementary to the Regulations. Unless specifically stated otherwise, in applying the regulations to this Agreement, Operator shall be substituted for Grantee, it being the understanding of the parties that Operator assumes all obligations of the Grantee with respect to the operational aspects of the Zone site(s) and Site.

Section 2. Term and Renewal

2.1 Unless otherwise terminated as herein provided, this Agreement shall remain in effect for five (5) years, unless the Operator business is sold, lease or transferred, whether by operation of law or voluntarily, or the operator changes, the grant of authority to the Grantee is revoked or terminated or the Site sunsets if no "foreign non-duty paid merchandise is admitted to the Site for a *bona fide* customs reason during the sunset period", commencing on the last date on which all of the following have occurred:

(a) approval of the Site by the FTZB;
(b) execution of this Agreement by the City Manager of Grantee provided the City Commission has delegated authority to the City Manager; and
(c) payment of all fees required under the Zone Schedule; and
(d) activation of the GP Zone by U.S. Customs (the "Effective Date").

This Agreement may automatically renew for subsequent five (5) year terms ("Renewal Terms") upon the mutual consent of the parties, and upon the same terms and conditions hereof as may be adjusted by the then current Zone Schedule (Tariff). To the extent not addressed herein, upon any extension or renewal of this Agreement, Operator agrees to comply with all standards, regulations, rules, laws, codes, whether, federal, state and local, and any fees in effect at the time of extension or renewal. Upon

the expiration of the term of this Agreement, if no new agreement or extension of agreement is entered into, Operator is obligated to deactivate the Site as of the date of the expiration of the term of the Agreement.

Section 3. Standards of Operation

3.1 Foreign-Trade Zone Schedule. Grantee has established standards of operation and management as set forth in the "FTZ No. 241 Zone Schedule," with which Operator agrees to fully comply with, as such document may be amended from time to time, a copy of which is attached hereto and made a part of this Agreement as Exhibit "B" (hereinafter "Zone Schedule"). Operator shall require strict adherence to the Zone Schedule and this Agreement by all persons, firms, and corporations admitted by Operator to the Site.

3.2 Right of Entry. Representatives of the FTZB, U.S. Customs Service (hereinafter "Customs"), and other authorized U.S. Government officers shall have the right to enter the Site or any portion thereof during normal business hours or as provided for by laws or regulations for the authorized and lawful purpose of examining the same; conferring with Operator, its agents, invitees, and employees on such premises; inspecting and reviewing operations, equipment, facilities, supplies, records and merchandise; and determining whether the business is being conducted in accordance with the procedures established in accordance with this Agreement, the Zone Schedule, and Procedures Manual.

3.3 Grantee's Right to Entry. Representatives of the Grantee, Zone Administrator shall have right to enter the Site or any portion thereof during normal business hours or as provided for by laws or regulations for the lawful purpose of conducting Grantee inspections of the Site or to determine compliance with all regulations. Notwithstanding, the parties specifically acknowledge that Grantee is not obligated to, nor does it intend to monitor the day-to-day activities of the Site or the Operator.

3.4 Activities on GP Site. Operator shall be responsible for all activity occurring within the Site. Any use of the Site other than as approved by the FTZB is expressly prohibited and constitutes a material breach of this Agreement.

3.5 Security. Operator shall take and maintain adequate security measures for merchandise located at the Site in accordance with Customs' rules and regulations, and Grantee shall have no responsibility, therefore.

3.6 Electronic Systems. Operator commits itself to the establishment of an electronic interface as required by U.S. Customs. When the specifications and requirements for said interface have been developed and implemented by U.S. Customs, Operator agrees that it will adapt and utilize all such inventory controls and interface. Operator agrees that it will pay all costs and expenses associated with the development, implementation, operation and maintenance of electronic systems required hereunder.

3.7 U.S. Customs Actions. Operator shall inform Grantee, by telephone or facsimile, and in writing within twenty-four (24) hours of any notices of audits, spot checks, or spot audits, and within five (5) business days of any liquidated damages, penalties or investigations by U.S. Customs regarding any merchandise or activity at the Site.

3.8 Repair and Maintenance of Facilities. Operator, at its own expense, shall at all times repair and maintain the structures and other facilities that Operator leases or owns within the Site, in a condition satisfactory to the Grantee and consistent with the nature of the operations in the Foreign-Trade Zone. Operator shall make such repairs or alterations as may be ordered by the FTZB or Grantee within a reasonable time after being so ordered. Operator agrees to keep the Site free from trash and debris, and agrees to maintain the Site in a safe, clean and sanitary condition.

Section 4. Administrative Fees and U.S. Customs Expenses

4.1 Administrative and Grantee Fees. In consideration of the granting of this authorization to operate the Site, Operator agrees to pay or cause to be paid any and all costs, expenses, penalties and taxes (if any) arising out of or in any way connected with the Site operation, including, but not limited to, costs and expenses for any fees that must be paid to the FTZB or U.S. Customs for the Site, construction, installation, improvements, security, maintenance, advertising and personnel expense, and to pay to Grantee, the following, non-refundable fees, in addition to any and all fees set forth in the Zone Schedule, as amended:

(a) Activation Fee. Upon execution of this Agreement, but prior to the Activation Request being submitted to U.S. Customs, Operator shall pay to Grantee a non-refundable activation fee of Five Thousand ($5,000.00) Dollars.

(b) Deactivation Fee. When Operator deactivates its Site (other than temporary deactivations of less than one year), Operator is responsible for the payment to the Grantee of a Deactivation Fee of Three Thousand ($3,000.00) Dollars, prior to requesting U.S. Customs to deactivate the Site. As used herein, "deactivation" shall not include "temporary deactivation" or alteration of a Site.

(c) Annual Fee. In consideration of the grant of this Agreement to operate and maintain the Site, Operator shall pay Grantee a non-refundable service charge ("Annual Fee"), which shall cover reasonable costs and expenses incurred by Grantee in connection with the maintenance of Foreign-Trade Zone No. 241, including the costs incurred in the establishment of said Zone and Site. The Annual Fee is established in the Foreign-Trade Zone No. 241 Schedule as required by 15 CFR Part 400 and is adjusted periodically. The Annual Fee shall be equal to Eight Thousand Dollars ($8,000.00) for each year of the initial term of this Agreement for an Operator located in a Private Magnet or Usage Driven Site and Ten Thousand and No/100 Dollars for any operator approved for production authority and may be adjusted thereafter as provided for

herein. The Annual Fee is to be paid within five (5) working days of receipt of the U.S. Customs letter of activation, and on the anniversary date of each year thereafter.

(d) Application Fee. Upon execution of this Agreement, but prior to the Activation Request being submitted to U.S. Customs, Operator shall pay to Grantee a non-refundable application fee of Two Thousand Five Hundred ($2,500.00) Dollars. In addition, Operator shall also pay Grantee an application fee of Five Thousand ($5,000.00) Dollars, whenever Grantee must return to the FTZB for approval to modify (add to or subtract from) the approved FTZ space, including but not limited to, adding space or area, deleting space or area, or reconfiguring space or area.

4.2 U.S. Customs Service Administration Expense. Operator shall pay, or cause to be paid, the full cost of all U.S. Customs Service administrative fees attributed to the Site, if any are or should in the future be required by law, regulation, or ruling. It shall be the responsibility of Operator to determine whether such fees must be paid.

4.3 U.S. Customs Service Bond Expense. Operator shall pay the full cost of and maintain for at least ninety (90) days after the expiration of the term or termination of this Agreement, a U.S. Customs Service Bond required by the U.S. Customs Service for operation of the Site, which shall be adjusted from time to time as changes to this requirement are made by U.S. Customs.

4.4 Site Operator Bond on Behalf of the Grantee. Operator shall pay the full cost of and maintain for at least ninety (90) days after the expiration of the term or termination of this Agreement a Surety Bond in the name of Grantee as an obligee under the bond in an amount equal to the amount of the Customs Bond, as may be changed by U.S. Customs from time to time, but in no circumstances shall the Operator Bond on behalf of the Grantee be reduced.

4.5 Bond Form. The form of the bonds required in Section 4.3 and 4.4 shall be approved by Grantee. All bonds shall specifically name the City of Fort Lauderdale as an Obligee under the bond. Bonds shall contain the following endorsement: "It is hereby understood and agreed that this bond may not be modified, canceled, terminated, or denied renewal by the surety unless and until Obligee has been provided with written notice at least forty-five (45) days before any such modification, cancellation, termination, or failure to renew becomes effective. The bond shall further specifically reference an agent of surety within the state authorized to accept all claims on the bond, including service of process necessary as a result of any litigation.

4.6 Breach. Failure to comply with Sections 4.3 through 4.5 of this Agreement constitutes a material breach of the same.

4.7 Fee Escalations. Zone, Site and Subzone sites shall be subject to the "then-current tariff fees" of Foreign-Trade Zone No. 241 upon the date of the initial term and each renewal date of this Agreement.

4.8 Assessments and Taxes. Operator shall be responsible for all assessments, taxes, and fees lawfully imposed on the Site.

Section 5. Recordkeeping Requirements

5.1 General Requirements. Operator shall maintain its accounts and inventory records for all merchandise and activity in the Site in accordance with generally accepted accounting principles and in compliance with all requirements of federal, state, or local government agencies having jurisdiction over the Operator.

5.2 Reports. Operator agrees to submit to Grantee, during the term herein or any extension thereto, reports containing data required by the Grantee, the FTZB, and U.S. Customs. All such reports and statements shall be signed by authorized officials of Operator, certifying to the accuracy of the reports. Current reports and due dates for reporting are:

(a) Foreign-Trade Zones Board Annual Report: The FTZ Board annual report shall be prepared on a calendar basis (January 1-December 31st of each year) and shall be input by the Operator with a copy sent by the Operator to the Grantee to be received by Grantee no later than February 28th of the following year.

(b) Annual Certification Letter: This letter will signify that the Operator has prepared, on an annual basis, an annual reconciliation as prescribed by federal and U.S. Customs regulations, and such reconciliation shall also include:

(1) Operator shall undertake at least an annual physical inventory of all merchandise in the Site (unless continuous cycle counts are conducted) with prior notice of the date(s) given to Grantee and to U.S. Customs for any supervision of the inventory deemed necessary by either of them.

(2) As part of the annual reconciliation, Operator shall specifically and conspicuously reference the discrepancies, as required by U.S. Customs and federal regulations, Operator shall notify the U.S. Customs Port Director and Grantee of any discrepancies, when required by the U.S. Customs regulations.

(3) An annual reconciliation shall be prepared by Operator and provided to U.S. Customs, as prescribed in the applicable federal regulations.

(4) Operator shall submit to U.S. Customs, within ten (10) working days after completion, the above-mentioned certification letter declaring that the report has been completed, is accurate, and is available for review by U.S. Customs.

(5) A systems review shall be included indicating any material deficiencies, conversions, or modifications to the system tracking the inventory in the Zone and Site.

(c) Operator shall provide Grantee with copies of all correspondence from U.S. Customs to Operator and all correspondence from Operator to U.S. Customs concerning Foreign-Trade Zone operations, liabilities, and issues. All correspondences to and from the FTZB shall be made through the Grantee, and any direct correspondence shall be provided to the Grantee. All copies of Operator, U.S. Customs or FTZB correspondence, in whatever form (written or electronic), shall be sent to Grantee in a timely fashion, but not more than five (5) business days from receipt or date sent, unless otherwise provided in this Agreement.

5.3 Confidentiality. All financial operations information concerning Zone and Site operations shall be kept confidential, except for that information or documentation which is required to be made public by the FTZB, the Florida Public Records Act, federal or other applicable laws, or regulations.

5.4 Additional Reports. In the event that any audit, inspection, or examination by the U.S. Customs, the FTZB, or Grantee discloses that books, records, or operational procedures of Operator are not in conformance with the requirements of this Agreement or applicable laws or regulations, Grantee may order the immediate correction of the documents, procedures or deficiencies. In the event that it is anticipated that such correction will take in excess of five (5) working days, Operator shall submit a plan (report) to the Grantee for the correction of such discrepancy. Grantee shall respond to the proposed plan within five (5) working days by either accepting it or designating a reasonable time within which Operator must complete corrections.

5.5 Record Retention. All financial and accounting records concerning operations shall be retained for a period of five (5) years after the act or occurrence recorded or after the merchandise covered by such records has been forwarded from the Zone and Site, whichever is longer, and all such records shall be available at the Site for inspection and audit by Grantee or its designee, or any appropriate government agency during normal business hours upon twenty-four (24) hours prior written notice to Operator.

Section 6. Operation of Zone

6.1 Operator shall operate and maintain the Site in accordance with the terms of this Agreement, all provisions of the U.S. Foreign-Trade Zones Act and regulations issued thereunder, and all requirements of the FTZB and U.S. Customs Service.

6.2 Operator may conduct in the Site all activities necessary to operate the Site as permitted by the Act and only those activities approved in the FTZB approvals authorizing Zone Operator's Site.

6.3 Grantee hereby grants to Operator the right to undertake the following approved activities: Foreign-Trade Zone operations for and maintenance of yacht and boat storage and exhibition, sea trials (with U. S. Customs approval) and warehousing and distribution of components and tools for the marine industry.

6.4 Operator shall ensure that all merchandise and activities occurring within the Site are in compliance with all federal laws, rules, and regulations and in compliance with all rules and regulations established by Grantee for operations of the Zone, including Zone Schedules/Tariffs. Upon becoming aware of any violation of the laws, rules, and regulations referred to herein, Operator shall immediately notify Grantee of such violation.

6.5 Operator shall provide a published fee schedule for its operation inside the Site. Operator hereby agrees to comply with the Public Utility principal stated in 15 CFR Part 400 as applicable. All rates and charges are to be uniform, fair and suitable. Operator agrees to post its fee schedule within the activated area of its Zone and Site Operations in an appropriate and conspicuous location.

6.6 Operations Manual. Operator shall establish standards of operation and management of the Site, which comply with the requirements of the FTZB and U.S. Customs, and any applicable laws, rules, regulations, standards and codes. Operator shall ensure compliance with such standards by its employees, agents and representatives, and all persons, firms, corporations and other entities admitted by Operator to the Site. Operator, at is sole cost and expense, shall be responsible for preparing in written form and filing with U.S. Customs a Foreign-Trade Zone Site Operations/Procedures Manual. Operator shall immediately provide a copy of such manual to Grantee at the same time such manual is forwarded to U.S. Customs, and immediately after each and every amendment to the manual is forward to U.S. Customs.

6.7 Alteration of Activated Area. Operator shall not make any applications to U.S. Customs to alter the activated area of the Site without the prior written consent of Grantee.

Section 7. Indemnification and Insurance

7.1 Indemnification. Operator shall and will at all times forever hereafter fully and completely indemnify, defend, and hold harmless Grantee, its elected officials, employees, and agents from and against any and all detriment, damages, losses, claims, demands, suits, costs, expenses (including without limitation costs of suits and attorneys' and experts' fees through any appeals), fines, penalties, liquidated damages, duties, interest, cost of investigation, damages for personal injury or death, damage to property or the environment, defective condition or charges which Grantee, its elected officials, employees, or agents may directly or indirectly suffer, sustain, or be subjected to for or by reason of, or which in any way arise out of or are attributable to, this Agreement or the Site, or the execution and delivery hereof by Grantee, its elected officials, employees, and agents, or the use, operation, or maintenance of the Site by Operator, or the acts, omissions or negligence of Operator, its officers, employees, agents or subcontractors, or the failure by Operator, its officers, employees, agents, or

subcontractors to comply with any term or condition of this Agreement or any applicable federal, state or local law, rule or regulation, whether the same be suffered or sustained by Grantee, its elected officials, employees, or agents or by any other person who shall send Operator written notice of any claim asserted against Grantee in connection with this Agreement, or the use, operation, or maintenance of the Site, within seven (7) business days of its receipt of a written claim; and shall provide Operator with a reasonable opportunity to defend against such claim in accordance with the terms hereof. Operator shall retain the right to select counsel, subject to Grantee's approval through its City Attorney, which approval shall not be unreasonably withheld, conditioned or delayed. This indemnity obligation shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the Grantee and the City Attorney, any sums due Operator under this Agreement may be retained by Grantee until all of Grantee's claims for indemnification pursuant to this Agreement have been settled or otherwise disposed of, and any amount withheld shall not be subject to payment of interest by Grantee.

7.2 Environmental Obligations. Operator acknowledges and agrees that it shall be responsible for ensuring that all environmental permits and authorizations of the Site are and remain in compliance throughout the term of this Agreement with applicable environmental laws, rules, regulations and ordinances. Without any expense or cost to Operator and for as long as Operator leases or owns the Site, Operator shall remove and remediate or shall cause to have removed and remediated any non-permitted release or discharge or Pollutants, as hereinafter defined discharged or released at, on, over, or under the Site during the term of this Agreement. The term "Pollutants" means all derivatives or by-products of any one or more of the following terms, as defined by applicable local, state, or federal laws or regulations: hazardous substances, hazardous materials, hazardous waste, toxic substances, toxic pollutants, or such other pollutants, contaminants, substances, materials, and wastes as are or which become regulated under applicable local, state or federal laws or regulations. The provisions of this section shall survive the expiration or termination of this Agreement to the extent a breach of the environmental regulations hereunder occurred during the term of this Agreement. The indemnification obligation of Operator, as set forth in Section 7.1, includes, without limitation, costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal, or restoration work required by any federal, state or local governmental agency because of hazardous material present in the soil or groundwater or under the Site.

7.3 Insurance. Operator agrees to keep in effect during the term of this Agreement general liability insurance, naming the Grantee and its directors and officers as additional insured, (including an obligation of the insurer to defend Grantee in any action covered by the insurance), covering public liability arising out of or in connection with Operator's acts, activity or operations at and in connection with the Zone in an amount not less than $1,000,000 combined single limit liability for bodily injury and property damage. Operator will furnish Grantee, upon request, certificates of such insurance issued by the insurer. The insurance required hereby may be provided by a policy or policies arranged specifically to cover the obligations assumed hereby or by blanket insurance which covers these obligations and other obligations and liabilities of Operator.

Section 8. Recognition of Successor

8.1 It is the intent of the parties hereto that the Site shall be operated as a Usage Driven Foreign-Trade Zone Site for a period concurrent with the term of this Agreement and any approved extension thereof, but nothing herein contained shall obligate Grantee to recognize any successor to Operator, whether by sale, lease, transfer, or assignment, or operation of law, other than a subsidiary of Operator, or the parent or a subsidiary of the parent of Operator unless such prospective successor is acceptable in every respect to and at the discretion and upon the determination and approval of Grantee in writing. Notice of the closing of a sale, sublease, assignment or other change of ownership interest in said business to be conducted herein shall be given in writing by Operator at least forty-five (45) days prior to such closing and said notice shall contain the names and addresses of every person and entity acquiring any interest in said business or operations. Failure to provide notification to Grantee will be considered a material breach of this Agreement. If the successor in interest is other than one unconditionally accepted above, Grantee shall have the option and right to cancel this Agreement within (30) days after receipt of the notice from Operator.

Section 9. Default and Termination

9.1 Defaults by Operator. The occurrence of any one or more of the following events shall constitute a default of this Agreement by Operator:

(a) Operator fails to pay any installment of any FTZ-related fee or other amounts required to be paid, reimbursed, or expended by it under the provisions of this Agreement or the Zone Schedule, when the same shall become due for payment, and such failure remains uncured for ten (10) consecutive days after written notice of such failure has been given to Operator by Grantee, provided that written notice of the failure need be given only once during any twelve-month period after which notice is not required; or

(b) Operator defaults under any mortgage, deed, trust, or lease with respect to the Site; or

(c) Operator fails to perform or comply with (i) any non-monetary obligation, term, covenant, condition or provision of Operator under this Agreement or any other document executed or delivered in connection herewith or (ii) any other term, covenant, condition or provision of this Agreement or any other document executed or delivered in connection herewith, and does not commence and complete the correction of such failure within thirty (30) days after written notice of such failure from Grantee or, if by its nature the failure cannot be corrected within such thirty (30) days, Operator fails to commence such correction within such thirty (30) days or, having so commenced such correction, does not complete same within such additional reasonable time, as determined by Grantee (not to exceed an additional sixty (60) days), as required under the circumstances); or

(d) Operator files bankruptcy or reorganization proceedings or becomes insolvent, or is declared or adjudicated as or commits an act of insolvency or

bankruptcy, or any court takes jurisdiction of Operator's assets or property pursuant to any proceeding brought under the provisions of any bankruptcy or insolvency act, or makes an assignment for the benefit of creditors, or if a receiver or trustee is appointed to take charge of Operator's affairs, or any execution or sequestration or attachment shall be issued against Operator's property, or any part thereof shall be taken or occupied or attempted to be taken or occupied or in danger of being taken or occupied as a result of any action or proceeding of a party other than Operator, or Operator allows any final judgment against it unsatisfied, unstayed, or unbonded, or if Operator defaults in the performance of any covenant or agreement made hereunder; and such default is not remedied within thirty (30) days after notice of such default, then Grantee may thereupon terminate this Agreement and all rights hereunder of Operator; or

(e) The occurrence of FTZB or U.S. Customs action removing Operator's authority or ability to operate in Zone No. 241, which occurrence shall entitle Grantee to immediately terminate this Agreement; or

(f) The lack of Foreign-Trade Zone activity (filing 214's) on the Site for any three (3) year period which shall entitle Grantee to terminate this Agreement upon ten (10) days written notice to Operator; or

(g) Operator fails to comply with any provisions of the U.S. Foreign-Trade Zones Act and regulations issued thereunder, any requirements or regulations of the FTZB and U.S. Customs, any other applicable federal, state and local laws, rules, regulations, codes, and requirements, whether or not such legislation or rules are enforced by U.S. Customs or the FTZB.

9.2 In the event Operator fails to fulfill its obligations as otherwise set forth herein, Grantee may notify Operator that it is in default under this Agreement. Operator shall be given thirty (30) days after notice of said default to cure said default, unless otherwise specifically provided herein. If said default is not cured within said thirty (30) day period, Grantee may terminate this Agreement, unless otherwise provided herein.

9.3 Termination or Deactivation by Operator.

(a) Operator shall have the right, at any time, to terminate this Agreement and all rights and obligations hereunder upon thirty (30) days prior written notice to Grantee, provided that a written plan for deactivation is supplied to Grantee, all required fees have been paid, and a planning meeting is held with U.S. Customs on the deactivation prior to the thirty (30) days commencing.

(b) In the event this Agreement is terminated, Operator shall, at its sole cost and expense, take all actions necessary with respect to merchandise and goods on the Site, including the removal of all bonded merchandise and goods on the Site necessary to deactivate the Site, including the removal of all bonded merchandise and goods therefrom or making of a U.S. Customs entry. Operator shall be prepared to complete deactivation of the Site within ten (10) days of termination. In the event Operator fails to comply with the foregoing time limitation, Operator shall pay Grantee, as liquidated damages, an amount equal

to one (1%) percent of the value of the bonded merchandise and goods on the Site for each calendar day after the ten-day period has expired.

(c) Operator acknowledges and agrees that despite anything to the contrary contained herein, upon termination or expiration of this Agreement for any reason, Operator shall not be released or relieved from fulfilling any of its obligations or duties that arose or accrued during the term of this Agreement. Operator specifically represents and warrants to the Grantee that upon termination or expiration of this Agreement for any reason, Operator shall completely fulfill and perform all of its obligations or duties that arose or accrued during the term of this Agreement.

(d) In the event of termination, no refunds of any fees paid to Grantee in accordance with Section 4 of this Agreement will be processed or provided to Operator, except that where termination is the result of FTZB action Operator will receive a prorated portion of the Annual Fee paid in accordance with Section 4.1 (e) minus the Deactivation Fee set forth in Section 4.1 (b), unless said Deactivation Fee is otherwise paid to Grantee.

(f) Upon termination of this Agreement for any cause, Operator shall immediately discontinue all use of trade names, trademarks, signs and forms of advertising and any other indicia of operation within the Foreign-Trade Zone at the Site, specifically referring to Foreign Trade Zone No. 241, Fort Lauderdale Executive Airport, or the City of Fort Lauderdale. Should Operator fail to make or cause to be made, such changes, within ten (10) days after written notice, then Grantee shall have the right to enter upon the Site without being deemed guilty of trespass or other tort, and to make or cause to be made such changes at the expense of Operator, which expense Operator agrees to pay on demand.

9.4 Withdrawal of Grant. If the grant of a Foreign-Trade Zone to Grantee shall be revoked or canceled this Agreement shall terminate and Operator shall have no claim against Grantee by reason of such revocation or cancellation.

Section 10. Independent Contractor Status

10.1 Operator is an independent contractor in the performance of all activities and functions pursuant to this Agreement. Grantee and Operator are not and shall not be considered as joint venturers, partners, or agents of each other and neither shall have the power to bind or obligate the other except as set forth in this Agreement. Operator's officers, employees, agents and subcontractors shall not be considered officers, employees or agents of Grantee. Grantee and Operator further agree not to represent to anyone that they are agents of one another or have the authority to act on behalf of one another.

Section 11. Notices

11.1 Any notice given under the provisions of this Agreement shall be in writing and shall be sent by certified or registered mail by depositing the same in the U.S. Mail, postage prepaid, or by hand delivery or overnight courier. Any such notice mailed as

provided hereunder shall be deemed effective and served as of the date of mailing. Any notice given by hand-delivery or overnight courier shall be deemed to have been given on the date of receipt. Notices shall be addressed to:

Grantee: Fort Lauderdale Executive Airport
6000 NW 21st Avenue
Fort Lauderdale, Florida 33309
Attn: Zone Administrator

Operator: Rahn Marina LLC Bahia Mar SMI OPCO SERIES
17330 Preston Road, Suite 220A
Dallas, Texas 75252
Attn: Bryan C. Redmond

or to such other respective addresses as the parties may designate to each other in writing from time to time in accordance with this Section.

Section 12. Miscellaneous

12.1 Construction. This Agreement shall be governed by and construed in accordance with the Foreign-Trade Zones Act, regulations adopted by the FTZB thereunder, all amendments thereto, and the applicable laws of the State of Florida.

12.2 Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but such counterparts together shall constitute but one and the same Agreement.

12.3 Advertising. Operator may advertise that its operations are within a foreign trade zone; however, no designs, advertising, signs or forms of publicity referring to the Site shall be used unless the same has first been approved in writing by Grantee as meeting its standards (including wording, color, form, number, location and size). Grantee or its agent may advertise that the Operator's operations are within FTZ No.241; however, the Grantee agrees to consult with Operator to assure the accuracy of published data concerning the Site. Should the Grantee or Operator fail to approve or disapprove in writing any advertising materials within ten (10) days after submission, such materials shall be deemed approved. Operator agrees that all signage to be located on the Site shall comply with the Sign Regulations promulgated by the applicable local jurisdiction.

12.4 Cooperation. Operator agrees to cooperate with Grantee in connection with Grantee's reasonable efforts to comply with all laws, ordinances, regulations, rulings, opinions and directives, of governmental entities having jurisdiction over the Site and activities thereon, including but not limited to the FTZB and U.S. Customs, to the extent applicable to Operator or the Site, and Operator agrees to execute any amendments to this Agreement reasonably requested by Grantee to assist in such compliance. To the extent Grantee is required to incur additional costs associated with the Site due to no fault of its own, Operator agrees that the economic terms contained

herein may be renegotiated from time to time, provided that any increase in fees or costs to Operator are directly related to maintaining the Site.

12.5 Incorporation. The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the parties and incorporated herein as if fully set forth.

12.6 Further Instruments and Action. Each party shall deliver such further instruments and take such further action as may be reasonably requested by the other in order to carry out the provisions and purposes of this Agreement.

12.7 Headings. Headings and captions in this Agreement are solely for the convenience of reference and shall not affect its interpretation.

12.8 Venue; Waiver of Jury Trial. For the purposes of arbitration or litigation concerning or arising out of this Agreement between the parties, proceedings shall be in Broward County, Florida, or if in federal court, the U.S. District Court for the Southern District of Florida. To encourage prompt and equitable resolution of any litigation that may arise under this Agreement, each party waives any rights it may have to a trial by jury of any such litigation.

12.9 Integration. This instrument contains the entire agreement of the parties, and no representations, inducements, promises, or agreements, oral or otherwise, not embodied herein shall be of any force or effect.

12.10 Severability. In the event any provision or portion of this Agreement is declared void or defective by a court of competent jurisdiction, the remaining provisions shall continue to be effective.

12.11 Waiver. No failure of either party hereto to exercise any right or power given it hereunder, or to insist upon strict compliance by the other party of any obligation hereunder, and no custom or practice at variance with the terms hereof, shall constitute a waiver of the party's right to demand exact compliance with the terms hereof.

12.12 Amendment. This Agreement cannot be changed orally, but only by an agreement in writing executed by the parties hereto, with the same formality and of equal dignity herewith.

12.13 Assignment and Delegation. This Agreement shall be assignable by Grantee, and all benefits hereunder shall run to Grantee and its successors. This Agreement cannot be assigned, or the duties hereunder delegated by Operator without the express prior written permission of Grantee. Should Grantee provide such permission, this Agreement shall bind such successors or assigns of Grantee.

12.14 Joint Preparation. The parties acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been a joint effort. The language agreed to expresses the mutual intent of the parties and the resulting document shall not, solely

as a matter of judicial construction, be construed more severely against one of the parties.

12.15 Nondiscrimination. Operator shall not discriminate against any worker, employee, or applicant, or any member of the public, because of race, creed, color, religion, sex or national origin, or otherwise commit an unfair employment practice. Operator will take affirmative action to ensure that applicants are employed and that employees are dealt with during employment without regard to their race, creed, color, religion, sex, or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates or pay or other forms of compensation; and selection for training, including apprenticeship. Operator further agrees that this clause will be incorporated in all leases and contracts entered into with sublessees and contractors of materials or services and all labor organizations furnishing skilled, unskilled, and union labor, or who may perform any such labor or services in connection with this Agreement.

12.16 Sovereign Immunity. Nothing herein shall be deemed a waiver of statutory or common law sovereign immunity in favor of Grantee.

[Remainder of Page Intentionally Left Blank]
[Signature Pages Follow]

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year set forth below.

GRANTEE

CITY OF FORT LAUDERDALE

By _____
Christopher J. Lagerbloom, ICMA-CM
City Manager

Date: 06 24 22

(CORPORATE SEAL)

ATTEST:

_____
David R. Soloman, City Clerk

Approved as to form:
Alain E. Boileau, City Attorney

_____
Lynn Solomon
Assistant City Attorney

OPERATOR

WITNESSES:

Rahn Marina LLC Bahia Mar SMI OPCO SERIES, a Delaware limited liability Company

Heather Kelly

Heather Kelly

Witness Print Name

Kaitlyn Phillips

Kaitlyn Phillips

Witness Print Name

By _____

Bryan C. Redmond
President

Date; 6-16-2022

(CORPORATE SEAL)

ATTEST:

_____

Richard Carter

Print Name and Title
Vice President

STATE OF ~~FLORIDA~~: TEXAS
COUNTY OF ~~BROWARD~~: COLLIN

The forgoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this 16th day of June, 2022, by Bryan C. Redmond, President of Rahn Marina LLC Bahia Mar SMI OPCO SERIES, a Delaware limited liability company authorized to do business in the state of ~~Florida~~ Texas on behalf of Rahn Marina LLC Bahia Mar SMI OPCO SERIES. They are ☑ personally known to me or ☐ have produced _____ as identification.

(SEAL)

FRANCES ANNETTE BEEBE
Notary Public, State of Texas
Comm. Expires 04-14-2026
Notary ID 1561660

Frances Annette Beebe

Notary Public, State of ~~Florida~~ Texas
(Signature of Notary taking Acknowledgment)

Frances Annette Beebe

Name of Notary Typed
Printed or Stamped

My Commission Expires: 04/14/2026

1561660

Commission Number

COMMISSION AGENDA ITEM
DOCUMENT ROUTING FORM

2L

Today's Date: 6/21 **/2022**

DOCUMENT TITLE: **Foreign-Trade Zone Operating Agreement between COFL – Executive Airport (Grantee of FTZ #241) and Rahn Marina LLC, Bahia Mar SMI OPCO Series Operator. – Site 21**

COMM. MTG. DATE: **4/15/2014 &** **4/5/2022** **CAM #:** 14-0445 & 22-0218 **ITEM #:** CR-3 & CR-4 **CAM attached:** ☒ YES ☐ NO

Routing Origin: FXE **Router Name/Ext:** **Krystal/ x-4997** **Action Summary attached:** ☒ YES ☐

CIP FUNDED: ☐ YES ☒ NO

Capital Investment / Community Improvement Projects defined as having a life of at least 10 years and a cost of at least $50,000 and shall mean improvements to real property (land, buildings, or fixtures) that add value and/or extend useful life, including major repairs such as roof replacement, etc. Term "Real Property" include: land, real estate, realty, or real.

1) Dept: CAO **Router Name/Ext:** **Sonia/ x-5598** **# of originals routed:** 2 **Date to CAO:** 5/24/2022

2) City Attorney's Office: Documents to be signed/routed? ☒ YES ☐ NO **# of originals attached:** **2**
** Updated address on Zone Schedule and Mayor eliminated from signature Block.
Is attached Granicus document Final? ☐ YES ☒ NO Approved as to Form: ☒ YES ☐ NO

Date to CCO: 6/22/22 **Lynn Solomon** (Attorney's Name) LS (Initials)

3) City Clerk's Office: # of originals: 2 **Routed to:** Donna V./Aimee L./CMO **Date:** 06/22/22

4) City Manager's Office: **CMO LOG #:** Jun-39 Document received from: _____

Assigned to: CHRIS LAGERBLOOM ☐ TARLESHA SMITH ☐ GREG CHAVARRIA ☐
CHRIS LAGERBLOOM as CRA Executive Director ☐

☐ APPROVED FOR C. LAGERBLOOM'S SIGNATURE ☐ N/A FOR C. LAGERBLOOM TO SIGN

PER ACM: **T. Smith** _____ (Initial/Date) PER ACM: **G. Chavarria** _____ (Initial/Date)
☐ **PENDING APPROVAL** *(See comments below)*
Comments/Questions: _____

~~Forward 2 originals to ☐ Mayor ☑ CCO **Date:** 6.24.22~~

~~**5) Mayor/CRA Chairman:** Please sign as indicated. Forward ___ originals to CCO for attestation/City seal (as applicable) **Date:** _____~~

~~**6) City Clerk:** Forward __ originals to CAO for **FINAL APPROVAL** **Date:** _____~~

~~**7) CAO** forwards __ originals to **CCO** **Date:** _____~~

8) City Clerk: Scan original and forwards __ originals to: **Krystal Permanan / FXE./ x- 4997**
****Please email a scan of the executed document to ssierra@fortlauderdale.gov for our records.**
Attach __ ~~certified~~ Reso # 14-69 & 22-67 ☒ YES ☐ NO **Original Route form to Sonia ext. 5598**

Rev. 9/9/2020