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COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY

AND

Xmas Dave LLC

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UNIFORM PROJECT AGREEMENT

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DATED AS OF July 28, 2022

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ADDRESS:	18 Main Street
CITY/VILLAGE:	Silver Creek
TOWN:	Hanover
COUNTY:	Chautauqua
STATE:	New York

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Prepared By:

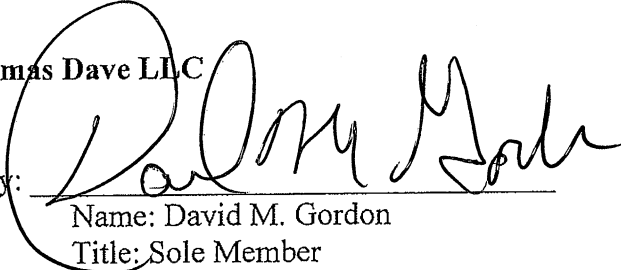
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Phillips Lytle LLP  
201 West Third Street, Suite 205  
Jamestown, New York 14701  
Attention: Gregory Peterson, Esq.

IN WITNESS WHEREOF, the Agency and the Company have caused this Agreement to be executed in their respective names by their respective duly authorized officers, all as of the day and year first above written.

**COUNTY OF CHAUTAUQUA  
INDUSTRIAL DEVELOPMENT AGENCY**

By: \_\_\_\_\_  
Name: Richard E. Dixon  
Title: CFO

**Xmas Dave LLC**  
By:  \_\_\_\_\_  
Name: David M. Gordon  
Title: Sole Member

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF CHAUTAUQUA )

On the \_\_\_ day of July, 2022, before me, the undersigned, a notary public in and for said state, personally appeared Richard E. Dixon, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF *Wyoming* )

On the 31 day of July, 2022, before me, the undersigned, a notary public in and for said state, personally appeared David M. Gordon, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

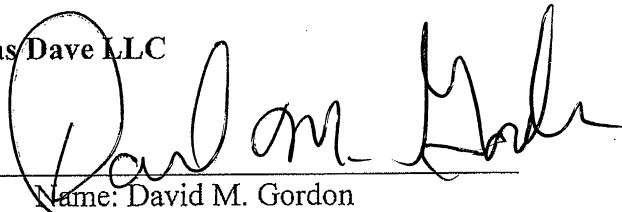
Katy L Cooper  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 01CO6321963  
Qualified in Wyoming County  
Commission Expires March 30, 2023  
Notary Public

*Katy L. Cooper*  
*July 31, 2022*

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Title: CFO

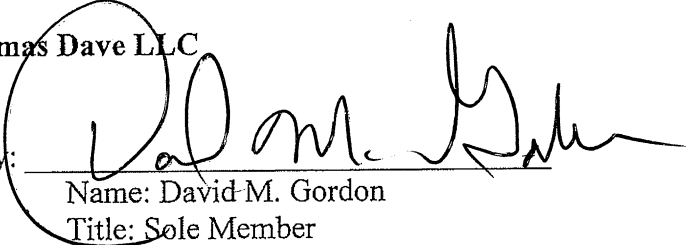
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By:   
Name: David M. Gordon  
Title: Sole Member

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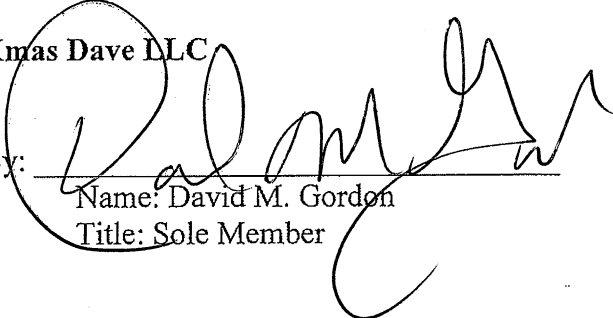
By:  \_\_\_\_\_  
Name: David M. Gordon  
Title: Sole Member

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By:  \_\_\_\_\_  
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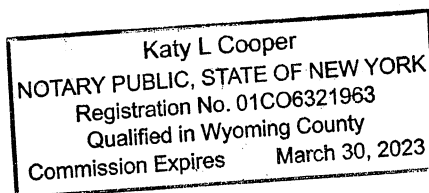
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Notary Public

*July 31, 2022*





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\_\_\_\_\_  
Notary Public

Katy L Cooper  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 01CO6321963  
Qualified in Wyoming County  
Commission Expires March 30, 2023

**BILL OF SALE**

**TO**

**COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY**

**Xmas Dave LLC**, a limited liability organization organized and existing under the laws of the State of New York, having an address at 85 Innsbruck Drive, Cheektowaga, New York 14227 (the "Grantor"), for the consideration of One Dollar (\$1.00), cash in hand paid, and other good and valuable consideration received by the Grantor from the **COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York, having an office for the transaction of business located at 201 West Third Street, Suite 115, Jamestown, NY 14701 (the "Grantee"), the receipt of which is hereby acknowledged by the Grantor, hereby sells, transfers and delivers unto the Grantee, and its successors and assigns, all right, title and interest of the Grantor in and to the materials, machinery, equipment, fixtures and furnishings which are described in Exhibit A attached hereto (the "Equipment"), whether now owned or hereafter acquired by the Grantor, which Equipment is located or intended to be located on certain real property (the "Land") located at 18 Main Street, Silver Creek, NY 14136.

TO HAVE AND TO HOLD the same unto the Grantee, and its successors and assigns, forever, and the said Grantor, for itself, its successors and assigns, covenants and agrees to and with the Grantee, its successors and assigns, to warrant and defend the sale of said Equipment hereby made unto the Grantee, its successors and assigns against the claims and demands of every and all persons whomsoever.

[Signature Page Follows]

IN WITNESS WHEREOF, the Grantor has caused this bill of sale to be executed in its name by its duly authorized officer and dated as of the 28th day of July, 2022.

XMAS DAVE LLC

By:

*[Handwritten Signature]*  
David M. Gordon  
Sole Member

STATE OF NEW YORK )  
 )SS:  
COUNTY OF *Wyoming* )

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Registration No. 01CO6321963  
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Commission Expires March 30, 2023

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XMAS DAVE LLC

By: *David M. Gordon*  
David M. Gordon  
Sole Member

STATE OF NEW YORK )  
 )SS:  
COUNTY OF Wyoming )

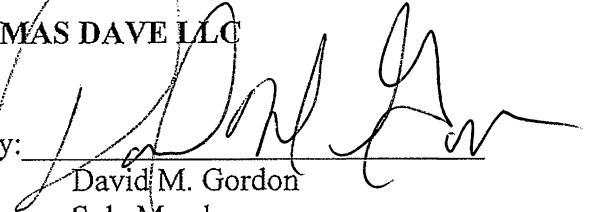
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David M. Gordon  
Sole Member

STATE OF NEW YORK )  
  )SS:  
COUNTY OF Wyoming )

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## SALES TAX AGENCY AGREEMENT

July 28, 2022

Xmas Dave LLC  
18 Main Street  
Silver Creek, NY 14136

Re: County of Chautauqua Industrial Development Agency  
2022 Xmas Dave LLC LEAD Project

Ladies and Gentlemen:

The County of Chautauqua Industrial Development Agency (the "Agency") and Xmas Dave, LLC (the "Company") agree as follows:

1. The Agency constitutes a corporate governmental agency and a public benefit corporation under the laws of the State of New York, and therefore, in the exercise of its governmental functions, including the acquisition of property, is exempt from the imposition of any New York State or Chautauqua County sales and use tax. As an exempt governmental entity, no exempt organization identification number has been issued to the Agency nor is one required.

2. Pursuant to a resolution adopted by the members of the Agency on November 26, 2019 (the "Authorizing Resolution") and a Uniform Project Agreement, dated as of July 28, 2022 (as amended, modified, supplemented or restated, the "Agreement"), between the Agency and the Company, the Agency has authorized the Company to act as its agent in connection with a project (the "Project") consisting of the following: interior renovations and alterations to an existing approximately 130,000 square foot building (the "Building") located at 18 Main Street, Silver Creek, County of Chautauqua, New York (the "Land"), all of the foregoing for use by the Company as a warehouse distribution facility, and the acquisition of certain capital improvements, materials, machinery, equipment, trade fixtures, furniture,

requirements are incorporated herein by reference, and the Company agrees to such requirements as a condition precedent to receiving the exemption from sales and use taxes.

11. The Company agrees to provide a completed Form ST-123, *IDA Agent or Project Operator Exempt Purchase Certificate* (each, a "Form ST-123"), to each vendor, lessor, licensor, contractor or subcontractor from which the Company purchases and/or leases Property, or with which the Company enters into an improvement or installation contract relating to the acquisition, renovation, installation and equipping of the Project Facility. All vendors, lessors, licensors, contractors and subcontractors are authorized to rely on such completed Form ST-123 as evidence that purchases and leases of Property, and improvement and installation contracts relating to the acquisition, renovation, installation and equipping of the Project Facility (but not the operation thereof), to the extent effected by the Company as agent for the Agency pursuant to Section 3.2(b) of the Agreement, are exempt from all New York State and Chautauqua County sales and use taxes. The Company agrees to provide the Agency with a copy of each such Form ST-123 within ten (10) days after the delivery of such form to the vendor, lessor, licensor, contractor or subcontractor.

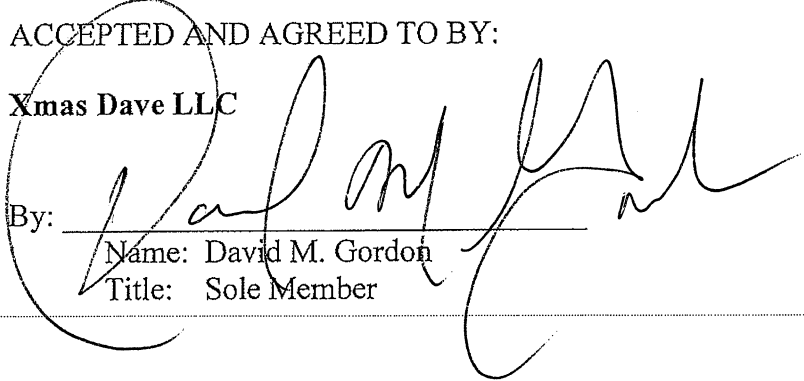
The signature of a representative of the Company where indicated below will indicate that the Company has accepted the terms hereof.

**COUNTY OF CHAUTAUQUA INDUSTRIAL  
DEVELOPMENT AGENCY**

By: \_\_\_\_\_  
Name: Richard E. Dixon  
Title: CFO

ACCEPTED AND AGREED TO BY:

**Xmas Dave LLC**

By:   
Name: David M. Gordon  
Title: Sole Member



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11. The Company agrees to provide a completed Form ST-123, *IDA Agent or Project Operator Exempt Purchase Certificate* (each, a "Form ST-123"), to each vendor, lessor, licensor, contractor or subcontractor from which the Company purchases and/or leases Property, or with which the Company enters into an improvement or installation contract relating to the acquisition, renovation, installation and equipping of the Project Facility. All vendors, lessors, licensors, contractors and subcontractors are authorized to rely on such completed Form ST-123 as evidence that purchases and leases of Property, and improvement and installation contracts relating to the acquisition, renovation, installation and equipping of the Project Facility (but not the operation thereof), to the extent effected by the Company as agent for the Agency pursuant to Section 3.2(b) of the Agreement, are exempt from all New York State and Chautauqua County sales and use taxes. The Company agrees to provide the Agency with a copy of each such Form ST-123 within ten (10) days after the delivery of such form to the vendor, lessor, licensor, contractor or subcontractor.

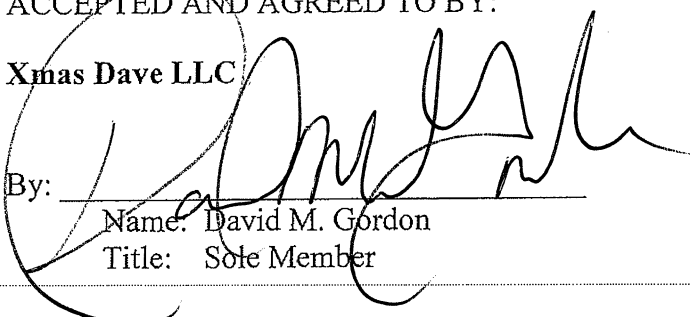
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ACCEPTED AND AGREED TO BY:

**Xmas Dave LLC**

By: \_\_\_\_\_

Name: David M. Gordon  
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Xmas Dave LLC

COMPANY GENERAL CERTIFICATE

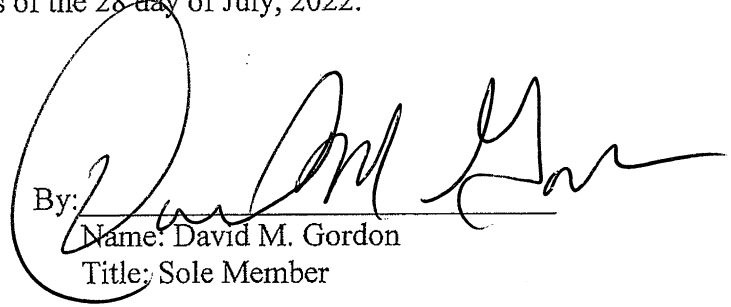
This certificate is made in connection with the execution by Xmas Dave LLC (the "Company") of a certain Uniform Project Agreement dated July 28, 2022 (the "Project Agreement") between the County of Chautauqua Industrial Development Agency (the "Agency") and the Company, and any other documents, instruments or agreements to be executed by the Company (together with the Project Agreement, collectively, the "Company Documents") in connection with the undertaking by the Agency, a public benefit corporation created pursuant to Chapter 1030 of the 1969 Laws of New York, constituting Title I of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act"), and Chapter 71 of the 1972 Laws of New York, as amended, constituting Section 895-h of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act"), of a project (the "Project") on behalf of the Company consisting of the following: (A) renovations and alterations to the facility and the acquisition and installation of certain furniture, fixtures, machinery and equipment (collectively, the "Equipment") in] an existing approximately 130,000 square foot building (the "Building") located at 18 Main Street, Silver Creek County of Chautauqua, New York (the "Land"), all of the foregoing for use by the Company as a warehouse distribution facility (collectively, the "Project Facility"); (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions or partial exemptions from sales and use taxes (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase) or sale of the Equipment to the Company or such other entity as may be designated by the Company and agreed upon by the Agency.

Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Project Agreement except that, for purposes of this certificate, (A) all definitions with respect to any document shall be deemed to refer to such document only as it exists as of the date of this certificate and not as of any future date, and (B) all definitions with respect to any Person shall be deemed to refer to such Person only as it exists as of the date of this certificate and not as of any future date or to any successor or assign.

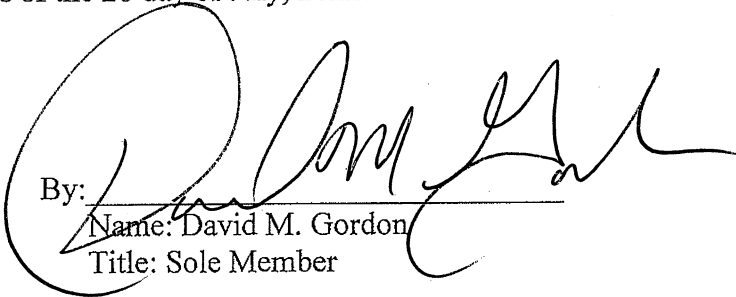
THE UNDERSIGNED, AS SOLE MEMBER OF THE COMPANY, HEREBY CERTIFIES THAT:

1. I am duly authorized to execute and deliver this certificate in the name and on behalf of the Company.
2. The Company (A) has been duly organized, is validly existing and is in good standing as a warehouse distribution facility under the laws of the State of New York, with full legal power and authority to own its Property, conduct its business and execute, deliver and perform its obligations under the Company Documents, (B) is duly qualified to do business in the State of New York, and (C) has taken all actions and obtained all approvals required in connection therewith.

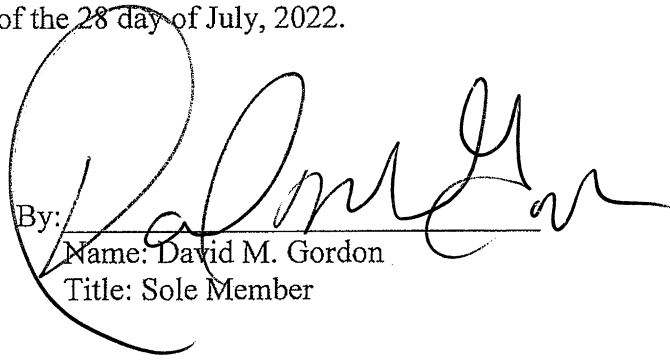
IN WITNESS WHEREOF, the undersigned has executed and delivered this certificate in the name and on behalf of the Company as of the 28 day of July, 2022.

By:   
Name: David M. Gordon  
Title: Sole Member

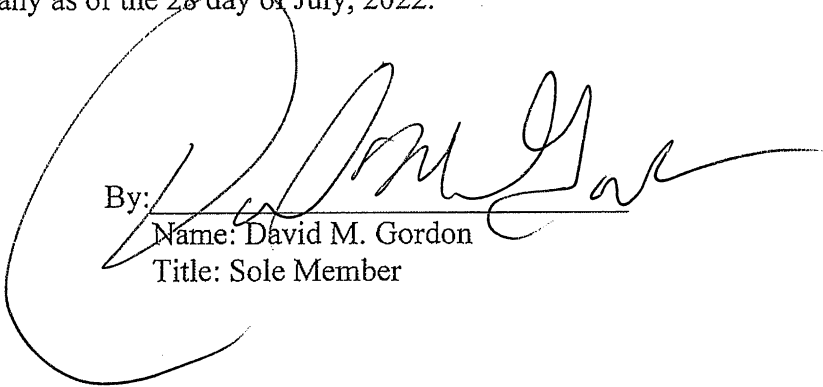
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By:   
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Title: Sole Member



**WRITTEN CONSENT  
OF  
THE SOLE MEMBER  
OF  
XMAS DAVE LLC**

The undersigned, being the sole Member of Xmas Dave LLC (the "Company"), hereby consents to, approves, and adopts the following Resolutions, which Resolutions shall have the same force and effect as if adopted at a special meeting of the Members of the Company, duly called and held for the purpose of acting upon these Resolutions.

WHEREAS, the Company is undertaking the renovation of an approximately 130,000 square foot warehouse located at 18 Main Street, Village of Silver Creek, Chautauqua County, New York and the purchase of associated equipment and other tangible property (the "Project"); and

WHEREAS, in furtherance of the Project, the Company has requested that the Chautauqua County Industrial Development Agency (the "Agency") provide financial assistance to the Company in the form of a sales tax abatement (the "Financial Assistance");

NOW, THEREFORE, BE IT:

RESOLVED, that the Financial Assistance and all other transactions contemplated therein be, and hereby is, authorized, approved, ratified and confirmed in all respects; and be it further

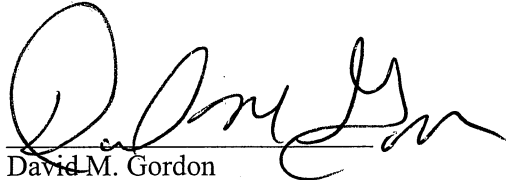
RESOLVED, that the sole Member of the Company be, and hereby is, authorized, directed and empowered to negotiate, execute, and deliver to the Agency any and all documents necessary to effectuate the Financial Assistance, including but not limited to, any project agreement, bill of sale, sales tax agency agreement, and any and all other agreements, documents, certificates and instruments (collectively, the "Agency Documents"), with such changes thereto that the sole Member may deem necessary or appropriate, which execution shall constitute conclusive evidence of approval of such changes by the Company; and be it further

RESOLVED, that all actions taken and all instruments executed by the sole Member, officers, or agents of the Company heretofore taken in connection to the Project, the Financial Assistance, the Agency Documents or in furtherance of these resolutions, are approved, ratified and confirmed in all respects; and be it further


RESOLVED, that delivery of this Action by Written Consent by facsimile, email (including a scanned portable document format copy sent by email) or other functionally equivalent means of electronic transmission shall be deemed to have the same effect as delivery of an original signed copy of this Action by Written Consent.

[INTENTIONALLY BLANK]

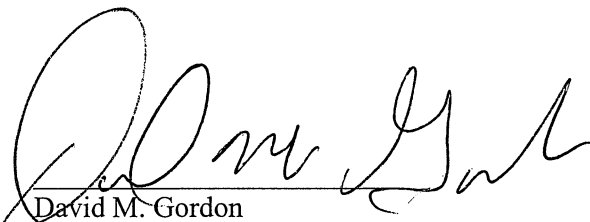
IN WITNESS WHEREOF, the undersigned has executed this Action by Written Consent as of the 28<sup>th</sup> day of July, 2022.

By:   
David M. Gordon  
Sole Member

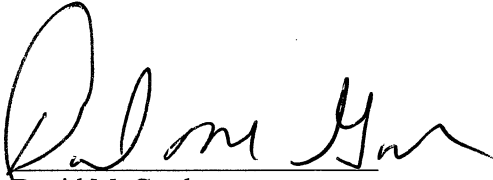
IN WITNESS WHEREOF, the undersigned has executed this Action by Written Consent as of the 28<sup>th</sup> day of July, 2022.

By:   
David M. Gordon  
Sole Member

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