

RESOLUTION OF THE WYOMING COUNTY INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING THE CONSTRUCTION OF AN APPROXIMATELY 19,980 SQUARE FOOT WAREHOUSE FACILITY BY PARK-WARNER, LLC AND COUNTRYSIDE STOVE & CHIMNEY, INC., D/B/A EMPIRE DISTRIBUTING, TO BE LOCATED AT 7406 ROUTE 98, ARCADE, NEW YORK, FOR SALE OR LEASE TO THE AGENCY AND SUBSEQUENT LEASE TO PARK-WARNER, LLC FOR SUBLEASE TO COUNTRYSIDE STOVE & CHIMNEY, INC., D/B/A EMPIRE DISTRIBUTING, THE EXECUTION OF LEASE AGREEMENTS, A PILOT AGREEMENT AND THE TAKING OF OTHER ACTIONS.

WHEREAS, the Wyoming County Industrial Development Agency (the “Agency”) is authorized under the laws of the State of New York, and in particular the New York State Industrial Development Agency Act, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended, and Section 901-b of the General Municipal Law, as amended (collectively, the “Act”), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial and research facilities and thereby advance the job opportunities, general prosperity and economic welfare of the people of the State of New York and to improve their prosperity and standard of living; and

WHEREAS, Park-Warner, LLC (the “Lessee”), for itself or for related entities, has entered into negotiations with officials of the Agency with respect to the renovation and equipping by the Agency without the proceeds of a bond issue of a project (the “Project”) consisting of (i) the construction of an approximately 19,980 square foot building to be utilized as a warehouse facility (the “Improvements”); (ii) the acquisition and installation of certain machinery, equipment and related personal property required in connection with the Improvements (the “Equipment”); and (iii) the conveyance of the Project pursuant to the lease of the Project to the Company, such Project to be located at 7406 Route 98, Arcade, New York 14009 (the “Premises”), and said Project to be subleased to Countryside Stove and Chimney, Inc., d/b/a Empire Distributing (the “Company”) who will serve as operator of the Project; and

WHEREAS, the Lessee has submitted an application and other materials and information (collectively, the “Application”) to the Agency to initiate the accomplishment of the Project; and

WHEREAS, the Application sets forth certain information with respect to the Company and Lessee and the Project, including the following: that the Company and Lessee desire Agency financing for the construction of an approximately 19,980 square foot warehouse facility in connection with its distribution business, at a cost of approximately \$1,495,000.00; that the Company and Lessee anticipate that seven (7) full-time jobs will be created as a result of the Project at the end of three (3) years of operation thereof; and that if Agency financing is disapproved, the Company and Lessee would likely not proceed with the Project; and

WHEREAS, the Agency has reviewed the Application and has prepared a cost-benefit analysis with respect to the Project, and has considered the extent to which the Project will create permanent, private-sector jobs, the value of the real property tax abatement to be provided, the amount

of private sector investment generated or likely to be generated by the Project, and the likelihood of accomplishing the proposed Project in a timely fashion; and

WHEREAS, after the giving of all required notices (including published notice), the Agency held a public hearing on the Project on August 3, 2022, and has considered all oral and written presentations made at or in connection with said public hearing; and

WHEREAS, the Agency desires to encourage the Company and Lessee with respect to the consummation of the Project, if by doing so it is able to induce the Lessee to proceed with the Project; and

WHEREAS, the Lessee has completed and submitted to the Agency an Environmental Assessment Form (“EAF”) in accordance with the provisions of the State Environmental Quality Review Act and regulations adopted pursuant thereto (collectively, “SEQRA”); and

WHEREAS, the Agency has completed Part 2 of the EAF and has considered the proposed Project and reviewed the EAF and the criteria set forth in SEQRA in order to determine whether the Project will have a significant effect on the environment and wishes to make the findings required of an agency under SEQRA.

NOW, THEREFORE, THE WYOMING COUNTY INDUSTRIAL DEVELOPMENT AGENCY HEREBY RESOLVES AS FOLLOWS:

Section 1. The Agency hereby resolves that the proposed Project will not have a significant impact on the environment for the reasons more particularly set forth in the negative declaration prepared by the Agency and, in accordance with SEQRA, hereby adopts such negative declaration with regard to the Project. A copy of the EAF and the negative declaration are attached to this Resolution as Exhibit A.

Section 2. The Project is described in the recitals to this Resolution. The financial assistance (the “Financial Assistance”) to be provided by the Agency in connection with the Project includes (i) an exemption from sales and use taxes for building materials and machinery, equipment, fixtures and furnishings purchased for incorporation into or for use at the Project location having a total cost not to exceed \$875,000.00; and (ii) a ten (10) year abatement from real property taxes in accordance with the Agency’s Uniform Tax Exemption Policy. The payment in lieu of tax arrangement shall be set forth in a Payment in Lieu of Real Estate Taxes Agreement to be entered into between the Agency and the Company (the “PILOT Agreement”).

Section 3. The Agency hereby determines that the Project and the financing thereof by the Agency pursuant to the New York State Industrial Development Agency Act will promote and is authorized by and will be in furtherance of the policy of the State as set forth in said Act.

Section 4. The Agency hereby determines that the Project will not result in the removal of a civic, commercial, industrial, or manufacturing plant of the Company or Lessee or any other proposed occupant of the Project from one area of the State of New York to another or result in the abandonment of one or more plants or facilities of the Company or Lessee or any other proposed

occupant of the Project located within New York State.

Section 5. The Agency hereby authorizes the Company and the Lessee, as agents for the Agency, to proceed with the Project as herein authorized. The Agency is hereby authorized to acquire an interest in the Project site and the buildings thereon, if any, and to make renovations or additions thereto. The Company is authorized to proceed with the acquisition and construction of the Project as set forth in the Project Assistance Agreement, the Agency Lease Agreement or Installment Sale Contract (as hereinafter defined).

Section 6. The Chairman, Vice Chairman, Executive Director, Secretary, Treasurer, and any Assistant Secretary of the Agency, and other appropriate officials of the Agency and its agents and employees, are hereby authorized and directed to do and cause to be done any and all acts and things necessary or proper for carrying out this Resolution and to complete the Project in cooperation with the Company and the Lessee.

Section 7. The Company and Lessee are authorized, as agents of the Agency, to initiate the renovation of a building constituting the Project, and the acquisition of machinery and equipment which will be a part thereof or will be used in connection therewith, and to advance such funds as may be necessary to accomplish such purposes. The designation of the Company and Lessee as agents hereunder is limited to purchases of sales-taxable tangible personal property and services in connection with the Project which do not exceed a total cost of \$875,000.00 and shall not apply to any other purchase by the Company or any operating expenses of the Company or Lessee. The Company and Lessee shall report to the Agency, at such times as the Agency shall require, or as may otherwise be prescribed by the Commissioner of the New York State Department of Taxation and Finance (the "Commissioner"), the value of all sales and use tax exemptions claimed by the Company or Lessee or agents of the Company or Lessee or any operators of the Project, including, but not limited to, consultants or subcontractors of such agents or Project operators under the authority granted pursuant to this Resolution. A failure to report may result in the revocation of the designation of the Company and Lessee as agents and repayment of any sales and use tax exemptions claimed.

Section 8. The Agency is hereby authorized to enter into a Project Assistance Agreement with respect the provision of the Financial Assistance authorized herein (the "Project Assistance Agreement"), to acquire an interest in the Project site and construct a facility thereon, and execute and deliver a lease by the Company to the Agency (the "Company Lease"), an Agency Lease Agreement (the "Agency Lease Agreement") or Installment Sale Contract (the "Installment Sale Contract") between the Agency and the Company and/or Lessee, the PILOT Agreement, and such other documents as may be necessary to fulfill the intent of the parties to the transaction (collectively, the "Project Documents"), in a form satisfactory to Agency counsel. The Chairman, Vice Chairman, Executive Director, Secretary, Treasurer, or any Assistant Secretary are each authorized to execute such documents and to make or approve such amendments or modifications to the Project Assistance Agreement, Company Lease, the Agency Lease Agreement, Installment Sale Contract, the PILOT Agreement and such other documents executed and delivered in connection therewith as they deem necessary under the circumstances provided, however, that such modifications do not materially alter the risk to the Agency.

Section 9. Reserved.

Section 10. Any such action heretofore taken by the Company or Lessee initiating the acquisition, installation and construction of the Project is hereby ratified, confirmed and approved.

Section 11. Any expenses incurred by the Agency with respect to the Project and the financing thereof shall be paid by the Company and Lessee. By acceptance hereof, the Company and Lessee each agree to pay such expenses and further agrees to indemnify the Agency, its members, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency with respect to the Project and the financing thereof.

Section 12. In the event the Project Documents are not executed between the Company, Lessee and the Agency by the expiration date of this Resolution (as such date may be extended as provided herein) or the termination of this Resolution, the Company and Lessee shall then be required to pay all sales taxes which would have been levied in connection with the acquisition, construction and installation of all improvements of the real property and the machinery and equipment which constitute the Project, as if the Agency did not have an interest in the Project from the date the Company or Lessee commenced its acquisition, construction and installation. In addition, in the event, because of the involvement of the Agency, the Company or Lessee claims an exemption from state sales or use tax in connection with the Project, and such exemption is claimed with respect to property or services not authorized hereunder, or which exemption is in excess of the amounts authorized hereunder, or is otherwise not permitted under this Resolution, or if the Company or Lessee shall fail to comply with a material term or condition regarding the use of property or services acquired by the Company or Lessee as agents for the Agency as set forth in this Resolution or in any document authorized hereunder, then the Company and Lessee shall each be required to remit to the Agency an amount equal to the amount of state sales and use taxes for which such exemption was improperly claimed. A failure to remit such amounts may result in an assessment against the Company and Lessee by the Commissioner of state sales and use taxes, together with any relevant penalties and interest.

In addition to the foregoing, in the event the Agency determines that Company or Lessee is in violation of a material term, or in the event that the Company (and the Lessee as applicable) closes the Project or relocates its operations to a location outside of Arcade within the time period during which the Company and Lessee is receiving Financial Assistance from the Agency or in the event the Agency determines, in its judgment, that the Company or Lessee knowingly and intentionally submitted false or intentionally misleading information in its application to the Agency or in any report or certification submitted to the Agency for the purpose of obtaining or maintaining any Financial Assistance from the Agency (each referred to herein as a “Recapture Event”), the Agency may, in accordance with its policies and procedures then in effect, (i) revoke the designation of the Company and Lessee and any agents of the Company and Lessee (including, but not limited to, consultants, sub-contractors or equipment lessors of the Company or Lessee) as agents for the Agency in connection with the Project and terminate the exemption from New York State and local sales and use taxes conferred with respect to the Project and/or (ii) require that the Company or Lessee, commencing with the tax fiscal year next following such Recapture Event make payments in lieu of taxes on the Project with respect to all applicable taxing authorities in such amounts as would be payable as real estate taxes levied on the Project if the Agency did not have an interest in the Project or otherwise modify the amount or terms of any Financial Assistance being

provided by the Agency in connection with the Project and/or (iii) require that the Company and Lessee pay to the Agency an amount equal to all or a portion (as determined by the Agency in its discretion) of the total value of (x) all sales tax exemptions claimed by the Company and Lessee and any agents of the Company and Lessee, including, but not limited to, consultants, sub-contractors, or any equipment lessors of the Company under the authority granted under this Resolution and the Project Assistance Agreement and/or (y) any exemption from real estate taxes received by reason of the Agency's leasehold interest in the Project. If the Agency makes any of the foregoing determinations and requires a repayment of all or a portion of the Financial Assistance received by the Company and Lessee, the Company and Lessee shall (i) cooperate with the Agency in its efforts to recover or recapture any or all Financial Assistance obtained by the Company and Lessee and (ii) promptly pay over any or all such amounts to the Agency that the Agency demands in connection therewith. Upon receipt of such amounts, the Agency shall then redistribute such amounts to the appropriate affected tax jurisdiction(s) unless otherwise agreed to by any affected tax jurisdiction.

Section 13. The Agency has made and makes no representation or warranty whatsoever, either express or implied, with respect to the merchantability, condition, environmental status, fitness, design, operation or workmanship of any part of the Project, its fitness for any particular purpose, the quality or capacity of the materials in the Project, or the suitability of the Project for the Company's or Lessee's purposes or needs. The Company and Lessee each are satisfied that the Project is suitable and fit for its purposes. The Agency shall not be liable in any manner whatsoever to anyone for any loss, damage or expense of any kind or nature caused, directly or indirectly, by the Project property or the use or maintenance thereof or the failure of operation thereof, or the repair, service or adjustment thereof, or by any delay or failure to provide any such maintenance, repairs, service or adjustment, or by any interruption of service or loss of use thereof or for any loss of business howsoever caused, and the Company and Lessee hereby indemnifies and holds the Agency harmless from any such loss, damage or expense.

Section 14. Should the appropriate officers of the Agency determine, in their absolute discretion, that there is reason to believe that the activities of any past or present owner or operator of the real property and improvements located at the Premises have resulted in the generation of any "hazardous substance" (as the term has been defined from time to time in any applicable federal or state law, rule or regulation), or that any party has stored, disposed or released any such substance on the Premises or within a one (1) mile radius thereof, the Agency shall be under no obligation to enter into a lease as contemplated by this Resolution.

Section 15. No covenant, stipulation, obligation or agreement herein contained or contained in the Project Documents, or any other documents, nor the breach thereof, shall constitute or give rise to or impose upon the Agency a pecuniary liability or a charge upon its general credit, nor shall be deemed to be a covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity.

Section 16. Should the Agency's participation in the Project be challenged by any party, in the courts or otherwise, the Company and Lessee shall defend, indemnify and hold harmless the Agency and its members, officers and employees from any and all losses arising from any such challenge including, but not limited to, the fees and disbursements of the Agency's counsel. Should

any court of competent jurisdiction determine that the Agency is not authorized under Article 18-A of the General Municipal Law to participate in the Project, this Resolution shall automatically become null, void and of no further force and effect (except for the obligations in this Section 16), and the Agency shall have no liability to the Company and Lessee hereunder or otherwise.

Section 17. This Resolution shall take effect immediately and shall continue in full force and effect for one (1) year from the date hereof and on or after such one (1) year anniversary, the Agency may, at its option (a) terminate the effectiveness of this Resolution (except with respect to the obligations of the Company pursuant to Sections 11, 12 and 16 of this Resolution which shall survive any expiration or termination) or (b) allow the Company additional time in which to close the transactions contemplated by this Resolution based upon affirmative actions taken by the Company and Lessee to complete such transactions.

ADOPTED: August 11, 2022

ROLL CALL VOTE:

	<u>Yes</u>	<u>No</u>	<u>Absent</u>	<u>Abstain</u>	<u>Excused</u>
A.D. Berwanger	[]	[]	[]	[]	[]
Mark Dadd	[]	[]	[]	[]	[]
E. Joseph Gozelski	[]	[]	[]	[]	[]
Nicole Hastings	[]	[]	[]	[]	[]
Thomas McCormick	[]	[]	[]	[]	[]
James Rutowski	[]	[]	[]	[]	[]
Rebecca Ryan	[]	[]	[]	[]	[]

Exhibit A
EAF and Negative Declaration

See attached.

Short Environmental Assessment Form

Part 1 - Project Information

Instructions for Completing

Part 1 – Project Information. The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

Part 1 – Project and Sponsor Information			
Name of Action or Project: Park Warner LLC			
Project Location (describe, and attach a location map): 7406 Route 98, Arcade NY 14009			
Brief Description of Proposed Action: Construction of a warehouse to accomodate overflow of inventory from our main warehouse which in turn will open up space in the primary warehouse to facilitate office expansion.			
Name of Applicant or Sponsor: Lois, Mike or Jeremy Rupp		Telephone: 585-736-4043	
Address: 7406 Route 98		E-Mail: lois@empiredistributing.net	
City/PO: Arcade	State: NY	Zip Code: 14009	
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.		NO <input type="checkbox"/>	YES <input type="checkbox"/>
2. Does the proposed action require a permit, approval or funding from any other government Agency? If Yes, list agency(s) name and permit or approval: Wyoming County Bldg Permit		NO <input type="checkbox"/>	YES <input checked="" type="checkbox"/>
3. a. Total acreage of the site of the proposed action?		40 acres	
b. Total acreage to be physically disturbed?		3/4 acres	
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?		40 acres	
4. Check all land uses that occur on, are adjoining or near the proposed action:			
<input type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input checked="" type="checkbox"/> Commercial <input type="checkbox"/> Residential (suburban)			
<input type="checkbox"/> Forest <input checked="" type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input type="checkbox"/> Other(Specify):			
<input type="checkbox"/> Parkland			

	NO	YES	N/A
5. Is the proposed action, a. A permitted use under the zoning regulations? b. Consistent with the adopted comprehensive plan?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	NO
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>	NO
8. a. Will the proposed action result in a substantial increase in traffic above present levels? b. Are public transportation services available at or near the site of the proposed action? c. Are any pedestrian accommodations or bicycle routes available on or near the site of the proposed action?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	NO
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	YES
9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies: _____ _____	<input type="checkbox"/>	<input checked="" type="checkbox"/>	NO
10. Will the proposed action connect to an existing public/private water supply? If No, describe method for providing potable water: <u>warehouse, no water needed</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	NO
11. Will the proposed action connect to existing wastewater utilities? If No, describe method for providing wastewater treatment: _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>	NO
12. a. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places? b. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	NO
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency? b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____ _____ _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>	NO
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	YES

Project:	5601-22-03
Date:	7-13-2022

**Short Environmental Assessment Form
Part 2 - Impact Assessment**

Part 2 is to be completed by the Lead Agency.

Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the reviewer. When answering the questions the reviewer should be guided by the concept "Have my responses been reasonable considering the scale and context of the proposed action?"

	No, or small impact may occur	Moderate to large impact may occur
1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Will the proposed action result in a change in the use or intensity of use of land?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Will the proposed action impair the character or quality of the existing community?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7. Will the proposed action impact existing:		
a. public / private water supplies?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. public / private wastewater treatment utilities?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
11. Will the proposed action create a hazard to environmental resources or human health?	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Reasons Supporting This Determination:

(See 617.7(a)-(c) for requirements of this determination ; see 617.7(d) for Conditioned Negative Declaration)

If Conditioned Negative Declaration, provide on attachment the specific mitigation measures imposed, and identify comment period (not less than 30 days from date of publication in the ENB)

For Further Information:

Contact Person:

Address:

Telephone Number:

For Type 1 Actions and Conditioned Negative Declarations, a Copy of this Notice is sent to:

Chief Executive Officer , Town / City / Village of

Other involved agencies (If any)

Applicant (If any)

Environmental Notice Bulletin, 625 Broadway, Albany NY, 12233-1750 (Type One Actions only)