CITY COUNCIL

AGENDA ITEM COVER SHEET

Meeting Date: Tuesday, May 24, 2022

Agenda Item: Resolution authorizing the City Manager to enter into a Development and

Use Agreement with Purple Rain Properties, LLC for business operations as a beverage bottling facility on property in Gateway Northwest Business Park.

SUMMARY / BACKGROUND

After a very competitive selection process, Eau Claire has been selected by Niagara Waters for a new beverage bottling facility. Total local investment is expected to exceed \$100 million plus 58 full-time positions with an average wage in excess of \$59,000. Developer intends to purchase from Gateway Industrial Park Corporation 30 acres located in the Gateway Northwest Business Park in the City for development of a 500,000 square foot facility. Developer is expected to break ground in 2023 and complete construction of all improvements, excluding a potential future Phase 2 expansion on or before March 31, 2024, but no later than March 31, 2025.

Water use is within the City's ability to serve. Committing to 1-year prior notice to expansion gives the parties time to plan any needed increase in water utility capacity.

While not expected, the City retains the ability to redirect water supply for residents drinking water in a severe water shortage emergency. The Developer estimated real property capital investment in the project (land, building, and site improvements) to be estimated at \$65 million, with a minimum value of \$50 million and a minimum annual tax payment of about \$1 million for at least the next 20 years.

ACTION / ATTACHMENTS

Action: Resolution

Attachments: Resolution

Development and Use Agreement

RESOLUTION

RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A DEVELOPMENT AND USE AGREEMENT WITH PURPLE RAIN PROPERTIES, LLC, FOR BUSINESS OPERATIONS AS A BEVERAGE BOTTLING FACILITY ON PROPERTY IN GATEWAY NORTHWEST BUSINESS PARK.

WHEREAS, Purple Rain Properties, LLC, (Developer), intends to purchase from Gateway Industrial Park Corporation certain real property located in the Gateway Northwest Business Park in the City of Eau Claire, consisting of no less than 30 acres of net usable real property; and

WHEREAS, Developer intends improvement, development, or re-development of the Property for business operations as a beverage bottling facility of approximately 500,000 square feet to include two (2) water bottling production lines in Phase 1 and an additional two (2) water bottling productions lines in planned Phase 2 along with surface parking, private primary storm-water facilities, and associated improvements to support manufacturing operations, construction activities, water purification and disinfection operations, packaging, warehousing and distribution; and

WHEREAS, Developer intends a total capital investment, (land, building, and site improvements) to be estimated at \$65 Million. Phase 1 job creation is estimated at 58 full-time positions, plus additional job creation potential through a planned Phase 2 expansion, with an average annual wage for Phase 1 hiring in excess of \$59,000 (excluding bonuses or benefits).

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Eau Claire that the City Manager is authorized to enter into a Development and Use Agreement with Purple Rain Properties, LLC in substantially the form attached hereto.

Adopted, May 24, 2022

(SEAL)	President Terry L. Weld
(SEAL)	City Manager Stephanie A. Hirsch
(ATTESTED)	City Clerk Carrie L. Riepl

DEVELOPMENT AND USE AGREEMENT

this DEVELOPMENT AND USE AGREEMENT (this "Agreement"), dated this _____ day of _____, 2022, by and between Purple Rain Properties, LLC, a Delaware limited liability corporation, (herein, together with its successors and assigns, referred to as "Developer"), and the City of Eau Claire, a Wisconsin municipal corporation organized and existing under the laws of the State of Wisconsin, (herein, together with its successors and assigns, referred to as "the City"), collectively referred to herein as the "Parties".

WHEREAS, Developer intends to purchase from Gateway Industrial Park Corporation ("Gateway") certain real property located in the Gateway Northwest Business Park in the City of Eau Claire, certain land consisting of no less than 30 acres of net usable real property, subject to final site planning and approval, which is more particularly shown and/or described and referred to as the Property in Exhibit 1, attached hereto to develop and operate a state-of-the-art beverage bottling facility; and

WHEREAS, Developer intends a total capital investment, (land, building, and site improvements) to be estimated at \$65 Million. Phase 1 job creation is estimated at 58 full-time positions, plus additional job creation potential through a planned Phase 2 expansion, with an average annual wage for Phase 1 hiring in excess of \$59,000 (excluding bonuses or benefits); and

WHEREAS, Developer is committed by stated company principles and through the terms of this Agreement to environmentally sensitive development and production best practices, sustainability, and water consumption and discharge policies and operational outcomes that meet or exceed applicable federal, state, and local standards, and

WHEREAS, the Parties acknowledge that the Property may come within future Tax Incremental Financing District #15, TIF project costs have substantially increased the desirability of the Property for industrial development, and that without the public investments made through TID #15 to date and as outlined in this Agreement, this project would not occur; and

WHEREAS, the development, use, operations, and legislative or regulatory approvals as may from time to time be required regarding the Property and Developer Improvements remain otherwise subject to the lawful review and approval of the City.

NOW, THEREFORE, in consideration of the above recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

Section 1. Defined Terms.

- (a) "Development Plan" shall mean the Developer proposed preliminary site plan, attached and incorporated hereto as **Exhibit 2**, as the same may be amended from time to time to reflect any changes to the Developer Improvements.
- (b) "Developer Improvements" shall include improvement, development, or redevelopment of the Property for business operations as a beverage bottling facility of

approximately 500,000 square feet to include two (2) water bottling production lines in Phase 1 and an additional two (2) water bottling productions lines in planned Phase 2 along with surface parking, private primary storm-water facilities, and associated improvements to support manufacturing operations, construction activities, water purification and disinfection operations, packaging, warehousing and distribution as depicted in as **Exhibit 3** attached and incorporated hereto.

- (c) "District" shall mean anticipated Tax Incremental Financing District #15, and any amendments and overlays thereof, created by the City under authority granted by § 66.1105, Wis. Stats.
- (d) "Property" shall mean a certain land parcel depicted and described in **Exhibit 1** consisting of approximately 30 acres.

Section 2. City's Work.

Subject to the terms and conditions set forth in this Agreement, and contingent upon Developer purchasing from Gateway and closing on the Property, the City agrees to perform certain public works to improve and serve the Property as provided in this Agreement.

(a) The City shall:

- 1. Design and construct an extension of Venture Drive north of County Line Road along the easterly side of the Property to an urban street cross section design specification generally consistent with other like rights of way in the City as determined by the City, which shall be without special assessment to Developer the cost of said public improvement project expected to be funded though the District with completion of at least temporary access to the Property concurrent with Developer Improvements.
- 2. Design and construct a regional stormwater facility east of CTH T and along the northwesterly side of the Property to a size to accommodate Developer Improvements on the Property as well as other expected growth and development in the vicinity to design specification generally consistent with other like facilities in the City as determined by the City, which shall be without special assessment to Developer the cost of said public improvement project expected to be funded through the District. Said improvements shall be concurrent with Developer Improvements with expected completion on or before December, 2023.

Section 3. Commencement / Completion of Construction.

- (a) Subject to the Agreement, Developer is expected to commence with ground breaking in 2023 and shall materially complete construction of all Developer Improvements, excluding the potential future Phase 2 expansion, as have described herein and indicated on the approved site plan for the Property as evidenced by issuance of occupancy permits by City projected on or before March 31, 2024, no later than March 31, 2025.
- (b) Except for an approved or permitted assignment pursuant to Section 10 (b), prior to completion of the improvements on the Property as provided in the Agreement, Developer shall not sell or otherwise transfer the legal or equitable ownership of the Property.

(c) Subject to the Agreement, City is expected to commence construction of the regional stormwater facility in 2023 with functional completion so as to accommodate stormwater from the Property and Developer Improvements that is projected for completion by December 31, 2023 and shall be completed no later than June 30, 2024.

Section 4. Development and Improvement of Property.

- (a) Developer shall:
 - 1. Subject to the terms of this Agreement, construct Developer Improvements.
- 2. Developer Improvements shall be designed and constructed to a level equal or greater to the quality of skill and materials generally utilized in comparable new industrial construction in the Eau Claire marketplace with exterior appearances to all street sides of the building comparable or superior to new construction in the Gateway Northwest Business Park.
- 3. Submit a site plan for City review and as necessary Plan Commission or City Council approval consistent with the City of Eau Claire Code.
- 4. Obtain site plan, building permits, and any and all other necessary approvals from the City prior to constructing any improvements upon the Property.
- 5. Construct and ensure connections to all public and private utilities, telecommunications, and other service connections necessary or desirable.
- 6. Conduct grading, site work, and any and all geotechnical analyses Developer may deem advisable to ensure the Property will support the Developer Improvements.
- 7. Construct and properly maintain private stormwater BMP facilities as may be required by the general development plan, City code, or the City Engineer for collection and pretreatment prior to release of stormwater to a City regional stormwater facility contemplated by this Agreement; upon and following completion of City Work under Section 2(a)2. of the Agreement.
- 8. Plant and maintain such trees, shrubs, grasses, and other landscaping on the Property as required by the site or general development plan.
- 9. All work performed by or on behalf of Developer shall be done in a workmanlike manner consistent with prevailing industry standards.

Section 5. Tax Status.

- (a) Developer agrees to ensure the City general real estate tax revenue on a total final assessed valuation of the Property and improvements thereon of Fifty Million Dollars (\$50,000,000) as of January 1, 2025 (the "Minimum Assessed Value") and thereafter, through January 1, 2045 for taxes payable in 2046, or through the life of the District, whichever is later. If the assessed valuation of the Property and improvements thereon should not meet the Minimum Assessed Value guaranty, Developer shall make payment according to a payment in lieu of tax ("PILOT") agreement pursuant to which Developer shall agree to pay to the City of Eau Claire the resulting deficiency in anticipated local property tax revenue resulting from the Property and improvements. The Developer shall execute at or before the closing date a PILOT in a form the same or substantially similar to that attached as **Exhibit 4** and City shall record it thereafter.
- (b) Developer agrees that they shall not, without the consent of the City, use or permit use of Property in any manner which would render any of the Property exempt from

general property taxes as long as all or any part of the property remain a part of the "TID" or 50 years whichever is greater. City's consent to the foregoing may be conditioned upon the obligation of the Developer or then owner of Property to enter into a PILOT agreement. Developer shall be prohibited from selling or transferring all or any portion of the Property to a non-general property tax paying party or entity while all or any portion of Property is a part of the TID, unless a PILOT agreement is entered into which is reasonably acceptable to the City. The restrictions imposed herein shall be contained in a deed restriction the Developer shall execute at or before the closing date in a form the same or substantially similar to that attached as **Exhibit 5** and City shall record it thereafter.

- Section 6. Water Use and Operations. The City operates water and sewer utilities that provides water and wastewater treatment to customers within the City of Eau Claire at rates and on such terms and conditions as set by the City and required by the Wisconsin Public Service Commission, other licensing authorities, and as otherwise required by law. Developer desires to become a customer of said City utilities and shall meet and comply with all such requirements of water and sewer industrial customers, including without limitation, any and all metering and use fees, pretreatment requirements, meter reading and facility inspections upon reasonable notice, emergency and capacity limitation orders, and shall otherwise reasonably cooperate with the City to coordinate service delivery as a large volume industrial customer.
- (a) Developer anticipates daily water usage in Phase 1 of approximately 425,000 gallons per day (GDP), and an additional 425,00 GPD in a planned Phase 2 expansion of the Developer Improvements totaling approximately 850,000 GDP. Developer shall provide the City written notice at least one (1) year prior to commencing construction on a Phase 2 expansion, or any other or additional expansion requiring water service from the City beyond said Phase 1 expectations, to provide time for the Parties to discuss available utility capacity and reach a mutual agreement on the timing and any related public works needed to meet the increased demand.
- (b) Developer anticipates up to 85,000 GPD for Phase 1 and up to an additional 85,000 GPD for a total of up to 170,000 GPD for Phase 2 of wastewater discharge to the City's POTW. Developer to meet any and all pretreatment requirements for such discharge.
- (c) Developer has made its own assessment of the adequacy and safety of the municipal water supply. City has made no representations or warranties in this or any regard and Developer proceeds on advice of its own counsel and at its own risk after a due diligence review.
- (d) Developer acknowledges that the City has police and emergency powers to protect and preserve life, safety, and public welfare and may use such lawful authority in the unlikely event that sufficient potable drinking water for human consumption by residents of the City is at risk, to reduce or even terminate service to Developer while any such a potable water emergency may exist. City will provide reasonable advance notice to Developer to the extent feasible and will work with Developer in good faith to maintain water service to the Property. City shall further use best efforts to source additional water supply to mitigate or avoid any such water emergencies, subject to City sole legislative discretion to fund and approve such water supply projects.

- Section 7. <u>Defaults and Remedies</u>. The City or Developer, as applicable, shall be deemed to be in default (herein, a "Default") hereunder if one or more of the following events shall occur:
- (a) The City or Developer defaults in the performance or observance of any of the covenants, restrictions, obligations, requirements, and stipulations to be performed and/or observed by such party hereunder, if such default shall continue for a period of thirty (30) days after notice in writing of such default has been given to such party by the other party; provided no Default shall be deemed to occur where the defaulting party promptly commences to cure a default within such thirty (30) day period and thereafter diligently pursues the curing of such default to completion; or
- (b) Developer shall file a voluntary petition in bankruptcy or shall be adjudicated as bankrupt or insolvent, or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, wage earner's plan, dissolution, or similar relief under present or any future federal bankruptcy act or any other present or future applicable federal, state, or other debtor's relief statute or law, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver, or liquidator of Developer, as applicable, or of all or any substantial part of the assets of Developer, as applicable; or
- (c) Within ninety (90) days after commencement of any proceeding against Developer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the present or any future federal bankruptcy act or any other present or future applicable federal, state, or other debtor's relief statute or law, such proceeding shall not have been dismissed, or stayed on appeal, or within ninety (90) days after the appointment, without the consent or acquiescence of Developer of any trustee, receiver, or liquidator of Developer, or of all or any substantial part of the assets of Developer, as applicable, such appointment shall not have been vacated or stayed on appeal or otherwise, or within ninety (90) days after the expiration of any such stay such appointment shall not have been vacated.
- If Developer defaults under this Agreement, the City shall have the right to either (1) terminate its obligations under this Agreement upon thirty (30) days' notice to Developer, or (2) commence an action seeking as its remedy specific performance of this Agreement. If the City defaults under this Agreement, Developer may (1) terminate its obligations under this Agreement upon thirty (30) days' notice to City, or (2) commence an action seeking as its remedy specific performance of this Agreement.
- Section 8. Force Majeure. The City or Developer, in performance of their respective obligations under this Agreement, shall not be responsible for any event of "force majeure", or unavoidable delay, which directly and materially prevents a [arty from performing its obligations under the Agreement, which shall mean an act of God, an inability to obtain labor, equipment, supplies, or materials in the open market, an enemy action, a civil commotion, an earthquake, a flood, a fire or other casualty, a war, hostilities, or invasion, an insurrection, a riot, mob violence, malicious mischief, sabotage, an unusual failure of transportation, a strike of any labor union, a lockout, a condemnation (other than a condemnation by the City), litigation of any law, order, or regulation of any governmental, quasi-governmental, judicial or judicial authority, underground conditions that were not and could not reasonably have been foreseen by the City or Developer, as

the case may be, prior to their discovery or occurrence, or any other similar cause not within the reasonable control of the City or Developer, as the case may be (but excluding any party's insolvency or financial inability to perform), provided that (1) the party which has been delayed shall have notified the other party(s) within ten (10) business days of the occurrence thereof, and (2) such unavoidable delay shall be deemed to continue only so long as the party whose performance has been unavoidably delayed shall be using reasonable efforts to minimize the effects thereof.

Section 9. Miscellaneous.

- (a) This Agreement has been delivered at Eau Claire, Wisconsin and shall be construed in accordance with and governed by the laws of the State of Wisconsin. If any of the terms or provisions contained herein shall be declared to be invalid or unenforceable by a court of competent jurisdiction, then the remaining provisions and conditions of this Agreement, or the application of such to persons or circumstances other than those to which it is declared invalid or unenforceable, shall not be affected thereby, and shall remain in full force and effect and shall be valid and enforceable to the fullest extent permitted by law.
- (b) All communications required or permitted under the terms of this Agreement shall be in writing, addressed as follows, and shall be deemed given when delivered by hand or two (2) days following the date mailed, postage prepaid, by certified or registered mail, return receipt requested:

If to Developer: Purple Rain Properties, LLC

Todd Uhlick

1440 Bridgegate Drive Diamond Bar CA 91765 tuhlick@niagarawater.com

With a copy via email only to: Purple Rain Properties, LLC

Will Uyesugi

1440 Bridgegate Drive Diamond Bar CA 91765 wuyesugi@niagarawater.com

If to the CITY: City of Eau Claire

Attention: City Clerk 203 South Farwell Street

P. O. Box 5148

Eau Claire, WI 54702-5148 carrie.riepl@eauclairewi.gov

Any party shall be entitled to change its address for notice as set forth below by giving notice of such change of address to the other parties in accordance with the provisions of this subsection.

- (c) No amendment to, modification or waiver of, or consent with respect to any provision of this Agreement shall in any event be effective unless the same shall be in writing and signed and delivered by the parties, and then any such amendment, modification, waiver, or consent shall be effective only in the specific instance and for the specific purpose for which given.
- (d) This Agreement, the Exhibits made a part hereof, and the other documents executed pursuant hereto constitute the entire agreement and understanding of the parties with respect to the subject matter hereof and shall not be modified or amended except by written agreement duly executed by the parties hereto.
- (e) Section captions used in this Agreement are for convenience of reference only, and shall not affect the interpretation of this Agreement.
- (f) This Agreement may be executed in any number of counterparts and by the different parties on separate counterparts, and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute but one and the same Agreement.
- (g) In computing any period of time pursuant to this Agreement, the day of the act, event, or default from which the designated period of time begins to run shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period shall begin to run on the next day which is not a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day thereafter which is not a Saturday, Sunday, or legal holiday.
- (h) This Agreement or any section thereof shall not be construed against any party due to the fact that said Agreement or any section thereof was drafted by said party.
- <u>Section 10.</u> <u>Assignment.</u> This Agreement shall not be assignable by Developer, Gateway or the City without the consent of the other parties to this Agreement. All of the terms, covenants, and conditions of this Offer shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.
- Section 11. Survivability. All of the representations, warranties, and agreements made in this Agreement shall survive the Closing Date.
- Section 12. Transactions After Closing Date. From time to time at the request of any party, the other parties shall execute and deliver such further instruments of assignment, conveyance, or transfer and take such action as may reasonably be requested to evidence the assignment, conveyance, transfer, and other transactions herein provided for to carry out this Agreement.
- <u>Section 13.</u> <u>Contingency.</u> The Parties' obligations to conclude any and all of the terms and conditions of this Agreement are conditioned upon Developer's purchase of the Property. The failure to timely close on the Property or expiration of the Closing Date without written extension by the Parties, shall void this Agreement without cost or obligation to either Party.

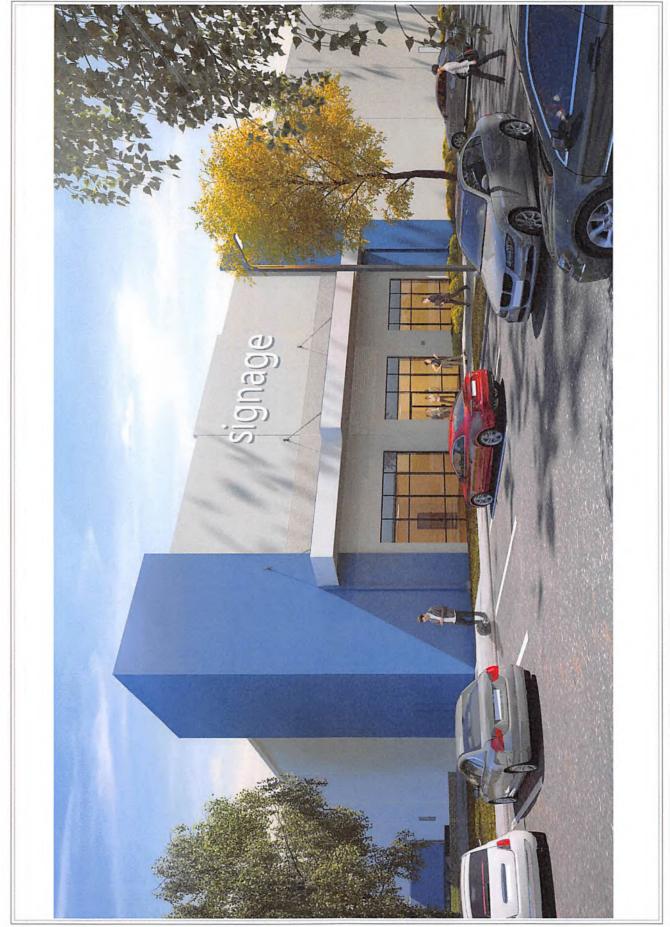
IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Agreement as of the date and year first above written.

PUR	PLE RAIN PROPERTIES, LLC
By:	Brian Hess
	Brian Hess, Manager

ACKNOWLEDGMENT

STATE OF }	
COUNTY OF} SS	
Personally, came before me this	day of, 2022, the above
instrument.	o be the person who executed the foregoing
(SEAL)	*
	Notary Public, State of My Commission expires:
	CITY OF EAU CLAIRE
Ву:	Stephanie A. Hirsch, City Manager
Attest	

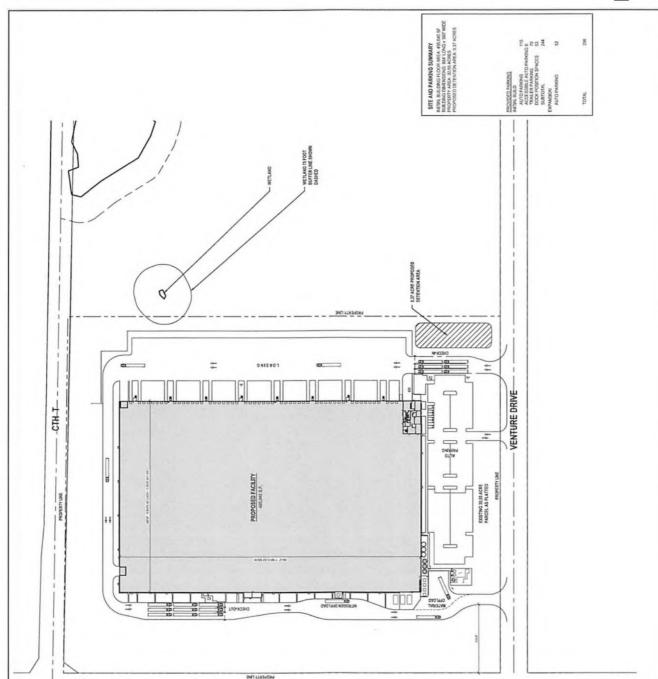
SITE, WAREHOUSE, SHELL AND OFFICE PURPLE RAIN PROPERTIES, LLC - EAU CLAIRE, WI





PROJECT MIN-WI wisconsin





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PRELIMINARY SITE EVALUATION PLAN



SITE, WAREHOUSE, SHELL AND OFFICE

PURPLE RAIN PROPERTIES, LLC

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