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\$46.00

Document Total

\$46.00

Existing Certs

1144406

RIGHT-OF-WAY AND EASEMENT USE AGREEMENT

This Right-of-Way and Easement Use Agreement ("Agreement") is made this 25th day of July, 2022, by and between the City of Bloomington, a Minnesota municipal corporation, 1800 West Old Shakopee Road, Bloomington, MN 55431 (the "**City**"), and Seagate Technology LLC, a California limited liability company, 47488 Kato Road, Fremont, California 94538 5603 PO Box 30001, Fremont, CA 94538 with a registered address at 1010 Dale Street North, St. Paul, Minnesota 55117 ("**Seagate**").

Recitals

- I. Seagate is the owner of the parcels of land located at 7850 Nord Avenue South and 7801 Computer Avenue South, in the City of Bloomington, Hennepin County, Minnesota, and legally described as "Lot 1, Block 1 SEAGATE 2ND ADDITION" and "Lot 2, Block 1 SEAGATE 2ND ADDITION" (the "Property").
- II. The City holds an easement for street purposes and for drainage, utility, sidewalk and bikeway purposes along the southern boundary of the Property, recorded in the Hennepin County office of the Registrar of Titles on February 10, 2005 as document 4076878, attached hereto as Exhibit A, (the "City Easement").
- III. The Bloomington City Council ("Council"), at its meeting of February 14, 2022, approved various applications related to the redevelopment of the Property, including a Major Revision to Preliminary and Final Development Plan for an 81,000 square foot building addition to the existing technology campus (Case PL202100255). The conditions of approval are attached hereto as Exhibit B. One of the conditions is that Seagate obtain and record a public right-of-way use agreement to allow Seagate use of the right-of-way along the southern boundary of the Property for parking and circulation purposes.
- IV. The City does not anticipate constructing public right of way, utility, sidewalk or other improvements (e.g. underground utilities) within the City Easement in the immediate future.
- V. Seagate desires to utilize the right-of-way and easement areas of the City Easement that are depicted in the attached Exhibit C (the "ROW and Easement Areas") in the interim period for vehicle circulation, surface parking, utilities, related maintenance, and other uses customary for surface parking lots and not inconsistent with the intent of this Agreement (collectively, the "Uses").

- VI. The City desires to allow Seagate to use the ROW and Easement Areas for the Uses until such time as the City requires those areas for construction of the relocated of West 78th Street improvements or for underground public utility improvements, or other public use.
- VII. This Agreement is intended to describe the terms and conditions for such interim use of the ROW and Easement areas by Seagate in order to satisfy the conditions of the Major Revision to Preliminary and Final Development Plan approval.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and promises contained herein, the parties agree as follows:

(1) Interim Use of ROW and Easement Areas

- a. Seagate may utilize the ROW and Easement areas for the Uses until such time as Seagate is required to terminate its use of such areas pursuant to this Agreement.
- b. Until such time as Seagate is required to terminate its use of the ROW and Easement areas, Seagate shall be solely responsible for the construction, maintenance, repair, and reconstruction of the improvements related to the Uses located within the ROW and Easement areas.
- c. Until such time as Seagate is required to terminate its use of the ROW and Easement areas, Seagate shall hold harmless, indemnify, and defend the City and its officers and employees for and against all claims for property damage, personal injury, or death occurring in connection with Seagate's interim use of the ROW and Easement areas, except to the extent that such claims arise out of the negligence of the City or its employees and agents.
- d. Until such time as Seagate is required to terminate its use of the ROW and Easement areas, Seagate shall be responsible for payment of taxes, if any, that may be due in connection with the use of the ROW and Easement areas.
- e. The interim use rights granted hereunder to Seagate are exclusive to Seagate and its respective successors and assigns of the Property.

(2) Termination of Use of ROW and Easement Areas

- a. The use of the ROW and Easement areas by Seagate under this Agreement shall cease in accordance with the provisions of a written notice ("Notice") sent by the City to Seagate.

b. The Notice from the City shall contain (i) a description of the public use to be made of the ROW and Easement areas by the City (whether for new street and related improvements including utilities, or solely for utility purposes, or other), (ii) a description of the extent to which Seagate will need to terminate and vacate its uses of the ROW and Easement areas for the City's use, and (iii) the effective date of the termination ("Termination Date"), which date shall not be earlier than one year from the date of the Notice.

c. The Notice shall be sent to Seagate at (i) the respective addresses of the Property, and (ii) the addresses for the owners listed on records of the City Assessor for the Property.

(3) Construction of Public Improvements

a. Termination and Vacation of Seagate's Interim Uses

- i. Seagate's right to use the ROW and Easement areas as contemplated by this Agreement shall terminate on the Termination Date and to the extent described in the Notice, and Seagate shall terminate and vacate its use accordingly, provided however, that Seagate and its employees, customers, and invitees may continue to use such areas for access to the Property during construction of the public improvements, subject to construction limitations and requirements set forth by the City.
- ii. The extent to which Seagate's use of the ROW and Easement areas for private utility improvements must be terminated will depend upon various factors (including factors such as the nature and scope of the City's project, any applicable design and construction requirements, and the location and condition of the existing utilities).
- iii. The City's Notice shall describe, in terms of the respective private utility lines and the relevant segments thereof, the extent to which the use and operation of the private utility improvements within the ROW and Easement areas must terminate and the extent to which such improvements may continue to be used, operated, and maintained by Seagate in those areas.
- iv. Terminated underground utility improvements shall be left in place by Seagate, and ownership of terminated portions of the utility improvements shall be automatically transferred to the City as of the Termination Date. The City may continue to use and operate the terminated improvements, abandon them in place, or may remove them in its discretion.
- v. Unless otherwise set forth in the Notice, the responsibility for repair and maintenance of service lines connecting the Property to the main lines of the public utilities shall remain that of Seagate, notwithstanding their location within the ROW and Easement areas.
- vi. Any improvements (except underground utility improvements lying within the ROW and Easement areas) that Seagate desires to salvage shall be removed,

at Seagate's own expense, from those areas on or before the Termination Date. To the extent such improvements are not removed, they shall be considered abandoned. Underground utility improvements shall be left in place, as provided by Paragraph 3(a)(iv).

b. Construction of the Public Improvements

- i. In the event that the public improvements to be constructed by the City consist solely of underground utility improvements, the City shall promptly restore the surface areas of the Property that have been disturbed by its work to the condition and configuration existing prior to the work, using materials and methods standard for similar construction by the City.
- ii. In the event that the public improvements to be constructed by the City consist of new street and related improvements for relocated West 78th Street (including sidewalk and utilities), the City shall construct such improvements. To the extent that adjacent portions of the Property must be disturbed to properly integrate the new public improvements with the Property, the City shall promptly restore the condition of the disturbed areas of the Property, using materials and methods standard for similar construction by the City. Seagate agrees to provide the City, at no charge, the necessary temporary access to the Property to integrate public improvements with the Property and to restore the condition of the Property. In using such temporary access, the City agrees that it will exert its best efforts to minimize impacts upon the business operations of Seagate being conducted on the Property.
- iii. If and when West 78th Street relocation improvements are constructed, Seagate shall thereupon be entitled to use the completed public improvements as any other members of the public and the Property shall have vehicle ingress and egress via a driveway connection to the relocated West 78th Street.

c. Assessment

- i. The cost and expense of the work done by the City shall initially be borne by the City, but such cost and expense may thereafter be assessed by the City against the Property and any and all other properties benefited by the improvements, in accordance with the City's assessment policies.

(4) General

- a. Filing of Agreement. This Agreement shall be filed of record with the Hennepin County Registrar of Titles on the certificates of the Property and proof of filing shall be provided to the City, prior to the issuance of any building permit for the Property.

- b. **Successors and Assigns; Runs with the Land.** The provisions of this Agreement shall run with the title to the Property, and the responsibilities, duties, and benefits accruing to Seagate shall automatically transfer to the successors and assigns of Seagate.
- c. **No Implied Abandonment or Vacation.** The City's agreement to permit the interim use of the ROW and Easement areas under this Agreement shall not be interpreted in any way to be an abandonment or vacation by the City of the public's rights and interests in those areas.
- d. **No Compensation.** It is understood and agreed that there shall be no right of compensation to Seagate for (i) the termination under the terms of this Agreement of Seagate's interim right to use the ROW and Easement areas and removal or transfer to the City of any improvements therefrom, including but not limited to the Uses (ii) the loss of parking on the ROW and Easement areas, and the Property, and the modification of the access and circulation of the Property, due to the termination of the interim rights to use the ROW and Easement areas under this Agreement, (iii) the construction of the public improvements, (iv) the temporary use of the Property pursuant to the temporary access provided in Paragraph 3(b)(ii), and (v) any other action or activity of the City contemplated by this Agreement. Except as provided in this Agreement, however, nothing shall permit the City to permanently take, without proper and just compensation, any property of Seagate.
- e. **Severability.** Invalidation of any one of the covenants or restrictions contained herein by judgments or court order shall in no way affect any other provision which shall remain in full force and effect.
- f. **Singular and Plural.** Whenever required by the context of this Agreement, the singular shall include the plural, and vice-versa, and the masculine shall include the feminine and neuter genders, and vice-versa.
- g. **Negation of Partnership.** None of the terms or provisions of the Agreement shall be deemed to create a partnership between or among the parties, nor shall such terms or provisions cause them to be considered joint venturers or members of any joint enterprise. No party shall have the right to act as an agent for another party unless expressly authorized to do so herein or by separate written instrument signed by the party to be charged.
- h. **Amendments.** This Agreement may be amended only by an instrument signed by the City and Seagate.

- i. Agreement Shall Continue Notwithstanding Breach. It is expressly agreed that no breach of this Agreement shall entitle any party to cancel, rescind or otherwise terminate this Agreement. However, such limitation shall not affect in any manner any other rights or remedies which such party may have hereunder, or at law or in equity, by reason of any such breach.
- j. Captions. The captions herein are inserted only for reference, and in no way define, limit or describe the scope of this Agreement, or the meaning of any provision hereof.
- k. Governing Law. This Agreement shall be construed and governed by the laws of the State of Minnesota.

In witness whereof the parties have hereby executed this Agreement effective the date first above written.

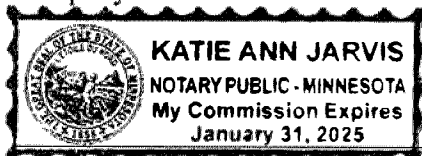
SEAGATE TECHNOLOGY LLC

By Kristin V. Duxstad, VP Water Op.
 Its Vice President of Water Ops

STATE OF MINNESOTA)
)
 COUNTY OF Anoka)

SS.

The foregoing document was acknowledged before me this 15 day of July, 2022 by Kristin Duxstad, the VP of Water Ops of Seagate LLC, a California limited liability company, on behalf of the company.



Notary Public

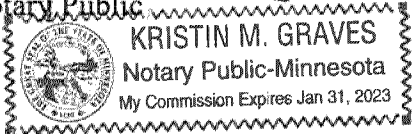
CITY OF BLOOMINGTON

By Tim Busse
Its Mayor

By James D. Verbrugge
Its City Manager

STATE OF MINNESOTA)
)
COUNTY OF HENNEPIN) SS.

The foregoing document was acknowledged before me this 21st day of July, 2022 by Tim Busse and James D. Verbrugge, the Mayor and City Manager of the City of Bloomington, a Minnesota municipal corporation, on behalf of the corporation.

Kristin M. Graves
Notary Public
KRISTIN M. GRAVES
Notary Public-Minnesota
My Commission Expires Jan 31, 2023

Reviewed and approved

Melissa J. Mendenhall
City Attorney

This document was drafted by:
City of Bloomington
1800 West Old Shakopee Road
Bloomington, MN 55431

EXHIBIT A
Street, Drainage, Utility, Sidewalk and Bikeway Easement

SCANNED

4076878

Doc. # 4076878

CERT. NO.
1144406TRANSFER ENTERED
HENNEPIN COUNTY TAXPAYER SERVICES

FEB 10 2005

OFFICE OF THE REGISTRAR
OF TITLES
HENNEPIN COUNTY MINNESOTA
CERT. NO. 1144406

FEB 10 2005

3:05 PM

HENNEPIN COUNTY MINN.
DEPUTY
*[Signature]*HENNEPIN COUNTY MINN.
DEPUTY
REGISTRAR OF TITLES
BY *[Signature]* DEPUTY20041-049 TORRENS #1104580
1131352EASEMENTOn this 14th day of December, 2004,

FOR VALUABLE CONSIDERATION, Seagate Technology, LLC, a Delaware limited liability company, Grantor, hereby conveys and quitclaims to the City of Bloomington, Grantee, a municipal corporation under the laws of the State of Minnesota, easements over and across real property in Hennepin County, Minnesota, described as follows:

An easement for street purposes over and across the south 40.00 feet of:

Lots 1 and 2, Block 1, SEAGATE 2ND ADDITION

Also, an easement for street purposes over and across that part of said Lot 2 lying south-westerly of a 100.00 foot radius curve, concave to the northeast, tangent to the west line of said Lot 2 and tangent to the north line of the south 40.00 feet of said Lot 2.

PART
1144406

Also, an easement for drainage, utility, sidewalk and bikeway purposes over and across part of said Lots 1 and 2. Said easement is described as a strip of land 15.00 feet in width lying north and northeast of and adjoining the above described street easements and lying south of a line drawn at a right angle to said west line of Lot 2 at the point of tangency of said curve on said west line of Lot 2.

TOGETHER with all hereditaments and appurtenances belonging thereto.

SEAGATE TECHNOLOGY, LLC

By Kathleen M. Snouffer
Its Vice PresidentSTATE OF Minnesota)
COUNTY OF Hennepin) SS

The foregoing instrument was acknowledged before me this 14th day of December, 2004, by Kathleen Snouffer, the Vice President, of Seagate Technology, LLC, a Delaware limited liability company, on behalf of said company.

notary stamp or seal in the space provided

MARY M. PATNODE
NOTARY PUBLIC - MINNESOTA
My Comm. Expires Jan. 31, 2008

[Signature]
Notary Public

THIS INSTRUMENT WAS DRAFTED BY:

City of Bloomington
1800 West Old Shakopee Road
Bloomington, MN 55431

STATE DEED TAX DUE HEREON: \$ 0

EXHIBIT B
COUNCIL CONDITIONS



February 15, 2022

Seagate Technology, LLC
ATTN: Martin Leppert
7801 Computer Avenue South
Minneapolis, MN 55435

RE: Case # PL202100255 – Major Revision to PDP/FDP for an addition to a technology campus
7801 Computer Avenue South and 7850 Nord Avenue South

Mr. Leppert:

At its regular meeting of February 14, 2022, the City Council approved a Major Revision to Preliminary and Final Development Plans for a two-story, approximately 81,000 square-foot building addition to an existing technology campus located at 7801 Computer Avenue South and 7850 Nord Avenue South (Case # PL202100255).

The approval is subject to conditions that must be satisfied prior to the issuance of a Grading, Footing, Foundation or Building Permit. While the conditions list includes selected City Code requirements of particular interest, the development must comply with all applicable local, state and federal codes.

1. Prior to Permit A Site Development Agreement, including all conditions of approval, must be executed by the applicant and the City and must be properly recorded by the applicant with proof of recording provided to the Director of Community Development.
2. Prior to Permit A building permit for all required changes to accommodate the proposed use be obtained.
3. Prior to Permit A Construction Management Plan must be submitted for review and approval by the City.
4. Prior to Permit Sewer Availability Charges (SAC) must be satisfied.
5. Prior to Permit Access, circulation and parking plans must be approved by the City Engineer.
6. Prior to Permit Grading, Drainage, Utility and Erosion Control plans must be approved by the City Engineer.
7. Prior to Permit An erosion control surety must be provided (16.08(b)).
8. Prior to Permit Storm Water Management Plan must be provided that demonstrates compliance with the City's Comprehensive Surface Water Management Plan. A maintenance plan must be signed by the property owners and must be filed of record with Hennepin County.
9. Prior to Permit A Nine Mile Creek Watershed District permit must be obtained and a copy submitted to the Engineering Division.

PLANNING DIVISION
1800 W. OLD SHAKOPEE ROAD, BLOOMINGTON MN 55431-3027
PH 952-563-8920 FAX 952-563-8949 MN Relay 711

AN AFFIRMATIVE ACTION/EQUAL
OPPORTUNITIES EMPLOYER

10. Prior to Permit A National Pollutant Discharge Elimination System (NPDES) construction site permit and a Storm Water Pollution Prevention Plan (SWPPP) must be provided if greater than one acre is disturbed (State of MN and Federal regulation).
11. Prior to Permit A Minnesota Pollution Control Agency (MPCA) Sanitary Sewer Extension or Modification Permit must be obtained or notification from the MPCA that this permit is not required must be submitted to the City (State of MN).
12. Prior to Permit A Minnesota Department of Health (MDH) watermain review and approval must be obtained or notification from MDH that this permit is not required must be submitted to the City (State of MN).
13. Prior to Permit Utility plan showing location of existing and proposed water main and fire hydrant locations must be approved by the Fire Marshal and Utilities Engineer (City Code Sec. 6.20, Minnesota State Fire Code Sec. 508).
14. Prior to Permit A Proof of Parking Agreement for 170 additional parking spaces must be approved and filed with Hennepin County.
15. Prior to Permit A public right-of-way use agreement must be approved and recorded to allow continued use of the right-of-way along the southern boundary of the campus for parking and circulation purposes.
16. Prior to Permit Tier 2 Transportation Demand Management plan must be submitted (Sec. 21.301.09(b)(2)).
17. Prior to Permit Landscape plan must be approved by the Planning Manager and landscape surety must be filed (Sec 21.301.15).
18. Prior to Permit Parking lot and site security lighting plans must be revised to satisfy the requirements of City Code Section 21.301.07.
19. Prior to Permit Exterior building materials must be approved by the Planning Manager (Sec. 19.63.08).
20. Prior to Permit New outdoor equipment yard must be screened according to Section 21.301.15(d) of the City Code.
21. Prior to Permit Trash and recyclable storage facilities must be compliant with Section 21.301.17 of the City Code.
22. Prior to C/O Prior to occupancy, life safety requirements must be reviewed and approved by the Fire Marshal.
23. Prior to C/O Building must be provided with an automatic fire sprinkler system as approved by the Fire Marshal (MN Bldg. Code Sec. 903, MN Rules Chapter 1306; MN State Fire Code Sec. 903).
24. Prior to C/O Buildings shall meet the requirements of the Minnesota State Fire Code Appendix L (Emergency Responder Radio Coverage) adopted through City Ordinance to have approved radio coverage for emergency responders based upon the existing coverage levels of the public safety communication systems.
25. Prior to C/O The developer must submit electronic utility as-builts to the Public Works Department prior to the issuance of the Certificate of Occupancy.
26. Prior to C/O Bicycle parking spaces must be provided and located throughout the site as approved by the City Engineer.
27. Ongoing Alterations to utilities must be at the developer's expense.
28. Ongoing All new rooftop equipment must be fully screened according to Section

Page 3
SEAGATE TECHNOLOGY, LLC
February 15, 2022

- 21.301.18 of the City Code.
- 29. Ongoing Fire lanes must be posted as approved by the Fire Marshal (MN State Fire Code Sec. 503.3).
 - 30. Ongoing All construction related loading, unloading, pick-up, drop-off, staging, stockpiling or parking must occur on site and off public streets.
 - 31. Ongoing Signs must be in compliance with the requirements of Chapter 19, Article X of the City Code.

Should you have any questions regarding this action, please contact Nick Johnson, Planner, at (952) 563-8925 or nmjohnson@BloomingtonMN.gov.

Sincerely,



Glen Markegard, AICP
Planning Manager

C: Nate Roisen, BWBR

DRAWING NOT TO SCALE