**Prepared by and after recording return to:**

Denton Austin PLC (JRD)
5120 Virginia Way, Suite C-11
Brentwood, Tennessee 37027

## EASEMENT AGREEMENT

**THIS EASEMENT AGREEMENT** (the "Easement Agreement") is made and entered into as of the 5th day of JULY, 2023, by and between **Vanderbilt University** ("Vanderbilt" or the "Grantor") and **The Metropolitan Government of Nashville and Davidson County, Tennessee** ("Metro" or the "Grantee"). Grantor and Grantee may sometimes be collectively referred to herein as the "Parties" and, individually, as a "Party."

## WITNESSETH THAT:

**WHEREAS,** Grantor is the owner in fee simple of that certain real property known as Jess Neely Drive, which is located on Vanderbilt's campus between Natchez Trace and 25th Avenue South in Nashville, Davidson County, Tennessee, all as more particularly shown and described on Exhibit "A" attached hereto and by this reference made a part hereof ("Jess Neely Drive" or the "Easement Area");

**WHEREAS,** Grantee, has had rights to the use and control of Jess Neely Drive as a public right-of-way and for public utilities, subject to Grantor's fee simple ownership of same.

**WHEREAS,** Grantee, by action of its Metropolitan Council taken on _____, 2023 (Ordinance No. ____), has elected to abandon all of its existing rights in and to the use and control of Jess Neely Drive, subject to and effective only upon the full execution and recordation of this Easement Agreement with the Office of the Register of Deeds for Davidson County, Tennessee.

**NOW, THEREFORE,** in consideration of the mutual promises and covenants contained herein, the sum of TEN AND NO/100 DOLLARS ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Recitals.** The recitals are incorporated herein as material terms to this Easement Agreement.

2. **Metro's Abandonment of its Existing Rights to Use and Control of Jess Neely Drive.** In exchange for Vanderbilt's grant of the Public Utility Easement, the Access Easement

and the additional commitments, all as set forth and defined herein, Grantee hereby abandons its existing rights to use and control of Jess Neely Drive upon the full execution and recordation of this Easement Agreement with the Office of the Register of Deeds for Davidson County, Tennessee, as provided for in Ordinance No. __, which was approved by the Metropolitan Council on _____, 2023 ("Metro's Abandonment"). A copy of Metro's Ordinance No. __ is attached hereto as Exhibit B and by this reference made a part hereof.

3. **Vanderbilt's Grant of Public Utility Easement.** In exchange for Metro's Abandonment, Grantor hereby grants and conveys to Grantee a non-exclusive, perpetual public utility easement over Jess Neely Drive for the purposes of (i) maintaining utilizing, repairing and replacing existing public utilities; and (ii) installing, constructing, maintaining, utilizing, repairing and replacing future public utilities (the "Public Utility Easement"). The Public Utility Easement shall run with the land as a benefit to Metro and a burden upon Grantor's property. Grantor and Grantee acknowledge that Grantor's own utility infrastructure also is located within the Public Utility Easement and will remain and continue to be maintained and upgraded over time within the Public Utility Easement. More specifically, the following Vanderbilt utility infrastructure and public utilities are currently known to be located within Public Utility Easement:

a. Vanderbilt's water, chill, and power and low voltage lines;
b. Nashville Electric Service power lines;
c. Vanderbilt and local Communications Service Provider lines; and
d. Metro Water, sewer and stormwater lines (including separation of combined sewer for the Kerrigan Basin).

Grantor agrees not to perform any acts to limit or affect the rights of Grantee to enjoy the Public Utility Easement. Grantee acknowledges that the land upon which the Public Utility Easement is located shall remain the property of Grantor and may be used by Grantor for any purpose desired, including for Grantee's own current and future utility infrastructure, provided said use does not damage the public utilities or otherwise unreasonably interfere with the operation and/or maintenance of same. Grantee shall have the right to review and approve Grantor's plans for utility work within the Public Utility Easement, which approval shall not be unreasonably withheld by Grantee.

4. **Vanderbilt's Grant of Public Access Easement for Emergency Vehicles, Pedestrians, and Bicycles.** In exchange for Metro's Abandonment, Grantor hereby grants and conveys to Grantee a non-exclusive, perpetual public access easement for emergency vehicles, pedestrians and bicycles over Jess Neely Drive (the "Access Easement"). The Access Easement shall run with the land as a benefit to Metro and as a burden upon Grantor's property. Grantor agrees not to perform any acts to limit or affect the rights of Grantee to enjoy the Access Easement. Grantee acknowledges that the land upon which the Access Easement is located within Jess Neely Drive shall remain the property of Grantor and may be used by Grantor for any purpose desired, provided said use does not unreasonably interfere with use of emergency vehicles, pedestrians and bicycles within the Easement Area.

5. **Vanderbilt's Additional Commitments.** In exchange for Metro's Abandonment and the easements granted by Grantor herein, the Parties further agree to the following:

a. Vanderbilt has completed and submitted an updated "Jess Neely Drive Activities Policy," which was reviewed and approved by Metro on _____, 2023;

b. At no cost to Metro, Vanderbilt agrees to make upgrades associated with the Kerrigan Basin, including separation of the combination sewer and upgrades to aged public water lines within the project area. These upgrades are associated with Metro Public Utility ("MPU") improvements along Utility Corridors 1 & 6 (UC-1 & UC-6), at a total approximate cost to Vanderbilt (and at a savings to Metro) of approximately $19.6 million, as follows:

   i. UC-6: Natchez Trace and Jess Neely with MPU valued at approximately $13.9 million, as follows:
      1. Along Jess Neely Drive: approximately $6.0 million of MPU infrastructure upgrades/improvements; and
      2. Along Natchez Trace: approximately $7.9 million of MPU infrastructure upgrades/improvements.
   ii. UC-1: Along 25th Avenue, Garland Avenue and Children's Way: approximately $5.7 million of MPU infrastructure upgrades/improvements.

c. At no cost to Metro, Vanderbilt agrees to make upgrades associated with Kensington Drive at a total approximate cost to Vanderbilt (and at a savings to Metro) of approximately $2.5 million.

d. Vanderbilt agrees to maintain the Low Impact Development ("LID") Stormwater Infrastructure associated with the South End Zone within Jess Neely Drive, upon Metro's Abandonment.

e. Vanderbilt agrees to modify the traffic signals at (i) Jess Neely Drive and 25th Avenue; and (ii) Jess Neely Drive and Natchez Trace. These modifications shall be coordinated with the Nashville Department of Transportation ("NDOT"). Once Vanderbilt completes the modifications, NDOT will be responsible for future maintenance of those traffic signals, pursuant to this Easement Agreement.

f. Vanderbilt agrees to work to transform Jess Neely Drive into a permanent pedestrian corridor through effective placemaking and utilization of the following infrastructure improvements, including but not limited to:

i. Hardscape improvements utilizing permeable pavers;
ii. Site walls to address grade changes, creating "sittable" moments throughout the corridor;
iii. Seating opportunities, including seat walls;
iv. Enhanced tree canopy, including but not limited to canopy lost during improvements;
v. Enhanced landscape located to provide layering to the architecture and to address the grade change;
vi. Bicycle and scooter parking; and/or
vii. Moon lighting of tree canopy.

6. **Future Maintenance.** The Parties shall have no future maintenance obligations related to the improvements located within the Public Utility Easement and the Access Easement, except as set forth herein and as otherwise provided under controlling law.

7. **Estimated Costs Only.** The Parties acknowledge that the estimated costs detailed within this Easement Agreement are approximations and estimates only, and that the work estimated may cost more or less at the time the work is done. Grantee shall have no rights, and Grantor shall have no obligations, should the work cost less than estimated. Grantor shall have no rights, and Grantee shall have no obligations, should the work cost more than estimated.

8. **Successors and Assigns; No Third-Party Beneficiaries.** The easements contained herein (i) shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, (ii) are perpetual and run with the land as a benefit to Metro and a burden upon the Grantor's property, and (iv) do not create any rights in or for the benefit of any party except Grantee and Metro.

9. **Construction and Interpretation; Amendments.** This Easement Agreement constitutes the entire understanding and agreement of the Parties regarding the subject matter. It shall supersede all prior understandings, agreements and representations, written or oral. No provision of this Easement Agreement shall be construed for or against either Party because its legal representative drafted or participated in drafting such provision. If any provision in this Easement Agreement is deemed to be unenforceable, such provision shall be severed, and the remaining provisions shall remain in full force and effect. The headings, paragraph titles, captions, and arrangements used in this Easement Agreement are, unless specified otherwise, for convenience only and shall not be deemed to limit, amplify, or modify the terms of this Easement Agreement, nor affect the meaning thereof. All terms utilized in this Easement Agreement shall be construed, wherever the context so requires, so that the singular number shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders. Amendments or modifications to this Easement Agreement are void unless in a writing signed by the Parties.

**10.** **Governing Law.** This Easement Agreement shall be interpreted and construed according to, and its provisions and their enforceability governed by, the laws of the State of Tennessee, without regard to conflict of laws principles thereof.

**11.** **Counterparts.** This Easement Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which collectively shall constitute one instrument.

**12.** **Authority.** The individuals executing this Agreement, and each of them, represent and warrant that they have full authority to sign on behalf of, and thereby to bind, the entity on whose behalf they sign. The representative of Metro expressly represents that this Easement Agreement has been approved by the Metropolitan Council for Metro and that the representative has been authorized by the Metropolitan Council for Metro to execute this Agreement.

[SIGNATURES BEGIN ON NEXT PAGE]

**IN WITNESS WHEREOF** the undersigned have executed this Agreement under seal as of the day and year first written above.

**GRANTOR:**

**VANDERBILT UNIVERSITY**

By: Eric Kopstein
Its: _____

Date: 07 / 05 / 2023

STATE OF TENNESSEE
COUNTY OF DAVIDSON

Personally appeared before me, Kellee Reeves, a Notary Public of said County and State, Davidson County, TN with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who upon his/her oath acknowledged himself/herself to be the representative of Vanderbilt University ("Vanderbilt"), and that as such representative, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of Vanderbilt, as its representative.

Witness my hand and seal, at Office in Nashville, Tennessee, this 5th day of July, 2023.

KELLEA REEVES
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY
My Commission Expires 11-03-2025

NOTARY PUBLIC
MY COMMISSION EXPIRES: 11-03-2025

**[Signatures Continued on Following Page]**

**GRANTEE:**

**METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE,**

By: _____
Its: _____

Date: _____ / _____ / _____

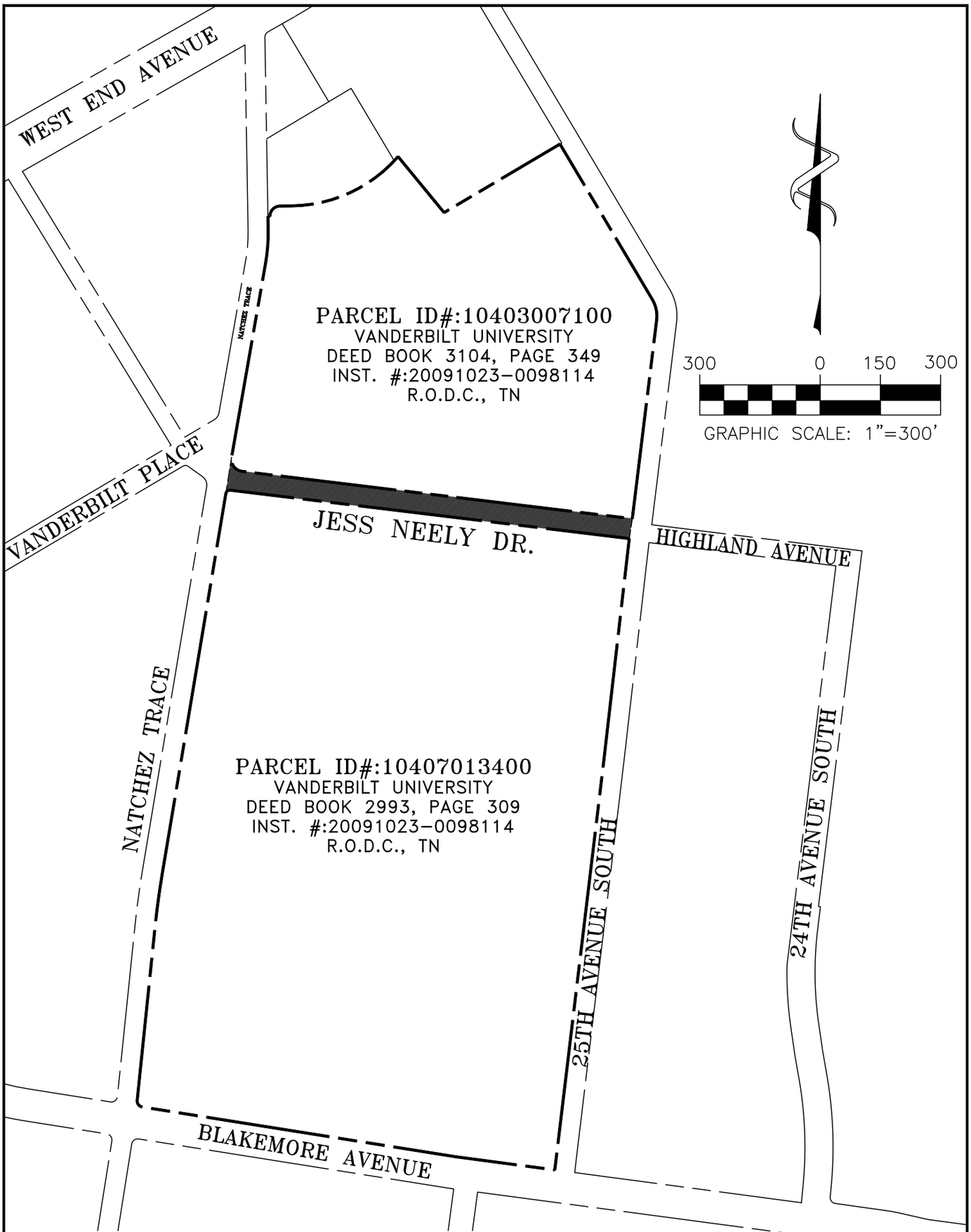
STATE OF TENNESSEE
COUNTY OF DAVIDSON

Personally appeared before me, _____, a Notary Public of said County and State, _____ with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who upon his/her oath acknowledged himself/herself to be the _____ of the Metropolitan Government of Nashville and Davidson County, Tennessee ("Metro"), and that as such representative, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of Metro, as its _____.

Witness my hand and seal, at Office in _____, Tennessee, this _____ day of _____, 2023.

_____
NOTARY PUBLIC
MY COMMISSION EXPIRES:_____

**EXHIBIT A**




Parcel ID#:10403007100 – 739,888 Sq. Ft. (16.985 Ac. ±)
Parcel ID#:10407013400 – 1,637,778 Sq. Ft. (37.598 Ac. ±)
Jess Neely Drive – 50,768 Sq. Ft. (1.165 Ac. ±)
Total Area – 2,428,434 Sq. Ft. (55.749 Ac. ±)

PROPERTY EXHIBIT
FOR THE CLOSURE OF
# JESS NEELY DRIVE
AND FOR THE COMBINATION OF
# PARCEL ID#:10403007100 &
# PARCEL ID#:10407013400
## VANDERBILT UNIVERSITY
NASHVILLE, DAVIDSON COUNTY, TENNESSEE

| SCALE: 1"=300' | JOB #: 22017EX CW | DATED: NOV. 09, 2022 | BY: CHERRY LAND SURVEYING, INC. |
|---|---|---|---|

**EXHIBIT B**

Ordinance No. ____

An ordinance approving the conditional abandonment of the public right of way of Jess Neely Drive between Natchez Trace and 25th Avenue South. (Proposal No. _____).

WHEREAS, the Metropolitan Government holds an easement for the public right of way of Jess Neely Drive between Natchez Trace and 25th Avenue South (the "Easement Area"), located on the campus of Vanderbilt University; and

WHEREAS, Vanderbilt University has proposed that the public right of way of Jess Neely Drive be abandoned and closed; and

WHEREAS, pursuant to the terms of the easement agreement attached as Exhibit 1 to this ordinance, Vanderbilt University proposes to convey a new permanent easement to the Metropolitan Government to preserve bicycle, pedestrian, and emergency vehicle access to the Easement Area and rights for installation, utilization, repair, and maintenance of public utilities therein; and

WHEREAS, as further detailed in the Easement Agreement, Vanderbilt University proposes to construct certain improvements to the public water and sewerage systems and traffic signals in the Easement Area and surrounding neighborhood.

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. Conditioned upon the execution and recording of the Easement Agreement by Vanderbilt University, the abandonment of the public right of way for Jess Neely Drive between Natchez Trace and 25th Avenue South is hereby approved.

Section 2. Amendments to this ordinance may be made by resolution.

Section 3. This ordinance shall take effect from and after its passage, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

RECOMMENDED BY:

_____

Diana Alarcon, Director
Nashville Department of Transportation

_____

Scott Potter, Director
Department of Water and Sewerage Services

APPROVED AS TO FORM AND LEGALITY:

_____

Assistant Metropolitan Attorney

INTRODUCED BY:

_____

_____

_____

Member(s) of Council