

# RECIPROCAL EASEMENT AGREEMENT

THIS RECIPROCAL EASEMENT AGREEMENT ("Agreement") is made as of the 23 day of April, 2012, by and between Portland Avenue Church of Christ, Inc. ("Portland Church"), a Kentucky domestic non-profit corporation and Portland Christian School Systems, Inc. ("PCS"), a Kentucky domestic non-profit corporation,

### WITNESSETH:

WHEREAS, PCS and Portland Church have historically shared the same property including, but not limited to, parking areas located at 2500 Portland Avenue, Louisville, Jefferson County, Kentucky;

Whereas, the parties have a desire to identify their interests in their respective properties;

Whereas, PCS is the owner of certain real property situated in the City of Louisville, County of Jefferson, and Commonwealth of Kentucky more particularly described in Exhibit A attached hereto and made a part hereof, and shown on the plot plan (the "Plot Plan") attached as Exhibit "B" hereto and made a part hereof;

WHEREAS, Portland Church is an owner of certain real property immediately adjacent to that of PCS on three sides of the PCS property; and

WHEREAS, PCS and Portland Church desire to enter into this Agreement to provide for the integrated use of the parking areas as shown on attached Exhibit "B" (parking areas shown on the attached to be referred to hereinafter as the "Common Area");

NOW, THEREFORE, in consideration of the premises, and Ten Dollars (\$10.00), the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

### ARTICLE 1 - EASEMENTS

SECTION 1.1 The parties hereby establish a non-exclusive easement over and for the use of the parking in favor of each Parcel to permit unobstructed pedestrian and vehicular passage and parking by the owner thereof and its agents, contractors, employees, tenants, licensees and invitees.

SECTION 1.2 The parties hereby establish a non-exclusive easement over the Common Area in favor of each Parcel to permit parking for any and all events or normal business usage as well as the construction, maintenance and use of all apparatus necessary to provide utility services to a Parcel, including without limitation telephone, electricity, water, natural gas and storm and sanitary sewers, provided that the same are constructed, installed, maintained and repaired in compliance with all laws, orders, rules and regulations of any governmental or private authority having jurisdiction over same, including without limitation

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the requirements of any utility companies, and are constructed underground. The dominant Parcel owner, PCS, in order to exercise its easement rights under this Section 2.2, must obtain the servient Parcel owner's approval of the plans and specifications for and the location of the utility facilities the dominant Parcel owner may in the future install on the servient Parcel, which approval shall not be unreasonably withheld, delayed or conditioned.

SECTION 1.3 Nothing herein shall create a gift or dedication to the public of, or otherwise create any rights of the public in any portion of the either Parcel. Notwithstanding any other provision hereof to the contrary, each Parcel owner periodically may restrict ingress and egress on its Parcel in order to prevent a prescriptive easement from arising by continued public use of same,. Any restriction on ingress or egress shall be limited to the minimum time period necessary to prevent a gift, dedication, creation of a prescriptive easement or other right, and shall occur at such times as to have minimum effect on the construction or operation of the parties.

## ARTICLE II - MAINTENANCE AND UPKEEP OF COMMON AREA

SECTION 2.1 PCS shall be responsible for the repair and upkeep of the Common Area, which repair and upkeep shall be performed in a workmanlike, diligent and efficient manner and shall include:

- (a) Maintenance of paved surfaces in a level and smooth condition, free of potholes, with the type of material as originally used or a substitute equal in quality, ensuring that the driveways, roadways, parking areas and sidewalks are properly graded and covered with all-weather asphalt surfacing and resurfaced as needed;
- (b) Removal of all trash and debris and washing or sweeping as required;
- (c) Removal of snow and ice from paved surfaces and sidewalks;
- (d) Maintenance of appropriate parking area entrance, exit and directional markers, and other traffic control signs as are reasonably required to effect the Plot Plan, including but not limited to maintenance and repair of access ways for ingress and egress to the Common Area, including striping and any directional markers or signs necessary for traffic control on the Common Area; cleaning of lighting fixtures and repairing as needed;
- (e) Restriping as required to keep same clearly visible;
- (f) Maintenance of any electrical and storm water lines which exclusively provide service to the Common Area;
- (g) Mowing, grooming and irrigation of all seeded, sodded, grass or ground covered areas and maintenance and replacement of all landscaped areas (including maintenance, repair and replacement of irrigation systems);

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- (h) Maintenance and cleaning of all storm water drainage systems and water detention basins which are created in or which serve the Common Area, including the repair and upkeep of any detention pond(s) created in the Common Area;
- (i) Maintenance, repair and replacement of enclosures for all Common Area trash receptacles;
- (j) Maintenance, cleaning, repairs and/or replacement of any fencing constructed on the Common Area.

Each owner of a Parcel shall, at its sole cost and expense (a) keep in good order, condition and repair the building(s) and other structural improvements constructed on its Parcel; and (b) erect and replace as needed all lighting structures and standards required to maintain adequate lighting for proper illumination of the driveway and parking area on its Parcel.

### ARTICLE III - LIABILITY INSURANCE

SECTION 3.1 The owner of each Parcel shall maintain general liability insurance, including contractual liability coverage, naming the other Parcel owners as additional insureds and providing coverage with a combined bodily injury, death and property damage limit of One Million Dollars (\$1,000,000) or more per occurrence. The owner of a Parcel shall provide the other Parcel owner with a certificate of insurance, which certificate shall provide that the coverage referred to therein shall not be modified or cancelled without at least thirty (30) days written notice to each named insured thereunder,

### ARTICLE IV - DAMAGE OR DESTRUCTION

SECTION 4.1 In the event that any part of the Common Area is destroyed or damaged by fire, casualty or force majeure, the owner of the affected Parcel, at its sole cost and expense, forthwith shall clear and restore such area.

SECTION 4.2 In the event that any part of any building on a Parcel is damaged by fire, casualty or force majeure, the owner thereof shall not be obligated to restore same, provided that such Parcel owner, at its sole cost and expense, shall diligently proceed to raze the damaged structures, remove all debris, and either (i) pave such area for parking in general conformity with the parking layout shown on the Plot Plan, or (ii) place said area in a grass lawn or other orderly landscaped condition, and in either case of (i) or (ii) install adequate storm drainage and adequate lighting in general conformity with the lighting used in the Common Area. Any area restored in this manner shall be maintained by the Parcel owner to the standards of the Common Area until improved with building improvements. In the event that the building(s) on Parcel I are damaged to the extent that no operations are being conducted on Parcel I, and the Parcel I owner does not commence repair or restoration of the damaged building(s) or construction of a new building on Parcel I within one (1) year

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following the date of the damage, and provided the owner of Parcel I has not conveyed Parcel I to a third-party or entered into a contract for the sale of Parcel I to a third-party during such one year period, then the Parcel II owner shall have the right to purchase Parcel I for its fair market value (less demolition costs should the Parcel I owner and the Parcel II owner agree that the Parcel I owner will not raze the damaged building and clear the site). In the event that the building(s) on Parcel II are damaged to the extent that no business operations are being conducted on Parcel II, and the owner of Parcel II does not commence repair or restoration of the damaged building(s) or construction of a new building on Parcel II within one (1) year following the date of the damage, and provided the owner of Parcel II has not conveyed Parcel II to a third-party or entered into a contract for the sale of Parcel II to a third-party during such one year period, then the Parcel I owner shall have the right to purchase Parcel II for its fair market value (less demolition costs should the Parcel I owner and the Parcel II owner agree that the Parcel II owner will not raze the damaged building and clear the site). If the Parcel I or Parcel II owner wishes to exercise its right to purchase as set forth herein, it shall give written notice (the "Election Notice") to the other owner within fifteen (15) days following the one year anniversary of the damage. If it fails to give the Election Notice within such fifteen (15) day period, its right to purchase under this Section 4.2 shall expire. The fair market value of the damaged Parcel shall be determined by an appraiser mutually selected by the Parcel I and Parcel II owners within ten (10) days following the date of the Election Notice. If the Parcel I and Parcel II owners cannot agree on an appraiser within such ten (10) day period, then each owner shall select its own appraiser and, provided the two appraisals are within ten percent (10%) of each other, the fair market value shall be the average of the two appraisals. If the two appraisals are more than ten percent (10%) apart, then the two appraisers shall select a third appraiser who shall also make a determination regarding fair market value. The valuations of the three appraisers shall then be averaged and the average shall be deemed the fair market value; provided however, if the valuation by any appraiser deviates more than ten percent (10%) from the average of all three valuations then the fair market value shall be deemed to be the average of the two closest valuations. Closing shall occur within 30 days following final determination of the fair market value. All appraisers selected pursuant to the terms of this Section 4.2 shall be reputable, qualified MAI appraisers having at least ten (10) years' experience in the type of appraisal to be undertaken, and shall not be affiliated with either owner in such a manner as could result in bias with respect to either party. Each owner shall share the costs of any mutually selected appraiser or any third appraiser equally, and shall pay the costs of its own appraiser.

SECTION 4.3 In the event that any part of the Common Area is condemned, the owner of the affected Parcel, at its sole cost and expense, forthwith shall restore such area as much as practicable to provide the same approximate configuration, size, location and number of parking lot light standards, driveways, walkways, parking spaces and curb cuts to adjacent roadways existing prior to the condemnation. Any award on account of a condemnation on the Common Area first shall be used in the restoration of same, and any claim to the award made by a Parcel owner or its tenants or licensees hereunder shall be expressly subject and subordinate to its use in such restoration. The term "condemnation" as used herein shall include all conveyances made in [lower case] anticipation or lieu of an actual taking.

Nothing in this Section shall be construed to give any Parcel owner an interest in any

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award or payment made to another Parcel owner in connection with any exercise of the power of eminent domain or any transfer in lieu thereof affecting said other Parcel Owner's Parcel or giving the public or any government any rights in said Parcel. In the event of any exercise of the power of eminent domain or transfer in lieu thereof of any part of the Common Area, the award attributable to the land and improvements of such portion of the Common Area shall be payable only to the owner thereof, and no claim thereon shall be made by the owners of any other portion of the Common Area.

Nothing in this Section shall prevent a tenant from making a claim against an owner pursuant to the provisions of any lease between such tenant and such owner for all or a portion of any such award or payment.

SECTION 4.4 If there shall be any building improvements located on the condemned area, the owner of said condemned area shall, at its sole cost, risk and expense, and at its option and subject to the other provisions of this agreement, either restore the remainder of said building as much as practicable out of the same materials used for the original structure or raze the remainder of the condemned structure, remove all debris, and either (i) pave the remaining area so razed for parking in general conformity with the parking layout shown on the Plot Plan or (ii) place said area in a grass lawn or other orderly landscaped condition, and in either case (i) or (ii), install adequate storm water drainage and adequate lighting in general conformity with the lighting used in the Common Area. Any area restored in this manner shall be maintained by the Parcel owner as though it were part of the Common Area.

SECTION 4.5 Notwithstanding the requirements of Sections 4.2 and 4.3 hereof, the Parcel I owner, in its sole and absolute discretion, in lieu of paving or landscaping the Building Area affected by a casualty or condemnation, may leave the building slab located within such Building Area in place, provided such building slab is maintained in a safe condition.

#### ARTICLE V - RESTRICTIONS

SECTION 5.1 The use of the easement and parking provided by his agreement shall only be for lawful purposes by both parties and shall not be assigned by Portland Avenue Church to any other party without the expressed written agreement of the PCS, which agreement shall not be unreasonably withheld.

#### ARTICLE VI - TAXES

SECTION 6.1 If applicable (in that both original parties to this agreement are church ministries), each Parcel owner shall pay (or cause to be paid) before delinquency all real estate taxes and assessments (herein collectively "Taxes") levied on its Parcel and the improvements situated thereon.

SECTION 6.2 Each Parcel owner may, at its own cost and expense by appropriate proceeding, contest the validity, applicability and/or the amount of any Taxes. Nothing in this

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Article shall require a Parcel owner to pay any Taxes so long as it contests the validity, applicability or the amount thereof in good faith and so long as it does not allow the affected Parcel to be forfeited to the imposer of such Taxes as a result of its nonpayment.

#### ARTICLE VII - DEFAULT

SECTION 7.1 Except as otherwise expressly set forth in this Agreement, should a Parcel owner breach any of its obligations hereunder and such breach continue for a period of thirty (30) days after its receipt of written notice, any of the other Parcel owners shall be entitled to cure such breach in addition to all remedies at law or in equity, provided that such party furnish prior notice to the other Parcel owners, and further provided that no notice is required should the breach create an emergency or interfere with use of a Parcel. All expenses incurred by the other Parcel owners to cure the defaulting Parcel owner's uncured breach pursuant to the preceding notice shall be reimbursed by the defaulting Parcel owner within thirty (30) days after receipt of written evidence confirming the payment of such expenses.

SECTION 7.2 Any sums remaining unpaid in accordance with Section 7.1, together with interest calculated at three percent (3%) above the prime rate charged by CitiBank, NLA., New York, New York, or any successor thereto, or at the highest annual interest rate allowed by law, whichever is less, may be secured by a lien on the Parcel of the owner in default and may be perfected in accordance with the laws of the Commonwealth of Kentucky, which lien shall be subordinate to the lien of any first mortgage on such Parcel that was recorded prior to the perfection of such lien.

#### ARTICLE VIII - MISCELLANEOUS PROVISIONS

SECTION 8.1 Except as provided below, this Agreement may be terminated or rescinded only with the approval of all owners of the Parcels. Parcel I owner and the Parcel II owner together may modify or amend this Agreement by filing an amendment hereto in the Office of the Clerk, Jefferson County, Kentucky. Nothing herein shall be deemed to prevent a Parcel owner from subdividing such Parcel into sublets for purposes of leasing or sale provided that all such sublets shall continue to be bound by the terms and conditions hereof.

SECTION 8.2 This Agreement shall not create an association, partnership, joint venture or a principal and agency relationship between the owners of the Parcels or their tenants or licensees.

SECTION 8.3 No waiver of any provision hereof shall be deemed to imply or constitute a further waiver thereof or any other provision set forth herein.

SECTION 8.4 Should any provision hereof be declared invalid by a legislative, administrative or judicial body of competent jurisdiction, the other provisions hereof shall remain in full force and effect and shall be unaffected by same.

SECTION 8.5 All notices and approvals required or permitted under this Agreement

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shall be served by certified mail, return receipt requested, to a party at the last known address of its principal place of business. Date of service of notice or approval shall be the date on which such notice or approval is deposited in a Post Office of the United States Postal Service or any successor governmental agency. Should a Parcel be subdivided by separate ownership, and an additional Parcel is not established by an amendment to this Agreement pursuant to Section 8.1 hereof, the party who owns the largest portion thereof is irrevocably appointed attorney-in-fact for all parties who may own an interest in the Parcel to receive all notices and to render all approvals hereunder, which receipt of notices and delivery of approvals shall be binding on all such parties.

SECTION 8.6 All of the provisions hereof shall run with the land in perpetuity and shall be binding on PCS and Portland Church and their respective successors and assigns; provided, however, if any of the provisions of this Agreement shall be unlawful, void or voidable for violation of the Rule Against Perpetuities, then such provisions shall continue only until twenty one (21) years after the death of the survivor of the now-living descendants of her Majesty, Queen Elizabeth II, the Queen of England.

SECTION 8.7 This Agreement contains the entire undertaking by the parties hereto and there are no other terms, expressed or implied, except as contained herein.,

SECTION 8.8 In the event either party purchases the additional land adjacent to either party identified on the Plot Plan as "Adjacent Land" such adjacent land will become part of Parcel owned by the party who purchases it and be subject to this Agreement.

However, should there be a structure upon any additional land acquired as defined above (or additional land adjacent to either party), which may be subsequently sold, then such additional land shall not become subject to this Agreement unless the purchaser in its sole discretion so chooses.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in three (3) counterparts, each of which constitutes an original instrument.

PORTLAND CHRISTIAN SCHOOL SYSTEMS, INC.

BY: M. Jordan Gray, Ex. Director

TITLE: Ex Director, Portland Christian School Inc.

PORTLAND AVENUE CHURCH OF CHRIST, INC.

BY: Gary Butt

TITLE: Minister

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COMMONWEALTH OF KENTUCKY )  
 ) SS  
COUNTY OF JEFFERSON )

Subscribed, sworn to and acknowledged before me by M. Jodell Seay on behalf of Portland Christian School System, Inc, this 23rd day of April, 2012.

My commission expires: June 8, 2013.

Robert E. Lyon  
NOTARY PUBLIC,  
State-at-Large, Kentucky

COMMONWEALTH OF KENTUCKY )  
 ) SS  
COUNTY OF JEFFERSON )

Subscribed, sworn to and acknowledged before me by Mary Butts on behalf of Portland Avenue Church of Christ, Inc., this 23rd day of April, 2012.

My commission expires: June 8, 2013.

Robert E. Lyon  
NOTARY PUBLIC,  
State-at-Large, Kentucky

THIS INSTRUMENT PREPARED BY:  
MASTERS, MULLINS & ARRINGTON

Earl C. Mullins, Jr.  
Earl C. Mullins, Jr., Attorney  
1012 South Fourth Street  
Louisville, Kentucky 40203  
502.582.2900

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EXHIBIT "A"  
RECIPROCAL ACCESS EASEMENT BETWEEN  
PORTLAND AVENUE CHURCH OF CHRIST  
AND  
PORTLAND CHRISTIAN SCHOOL SYSTEM, INC.  
LEGAL DESCRIPTION

Being a reciprocal access easement for joint use parking and other purposes affecting the lands of Portland Avenue Church of Christ and Portland Christian School System, Inc. described in Deed Book 7223, page 186 in the Jefferson County, Kentucky Clerk's Office and situated in the city of Louisville, Kentucky and more particularly described as follows:

Beginning at the intersection of the easterly right of way of North 26<sup>th</sup> Street and the southerly right of way line of Portland Avenue; thence with the southerly right of way line of Portland Avenue South 64 degrees 28 minutes 52 seconds East 247.85 feet to the True Point of Beginning of the access easement herein described:

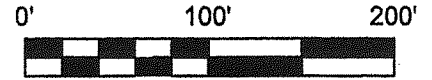
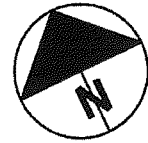
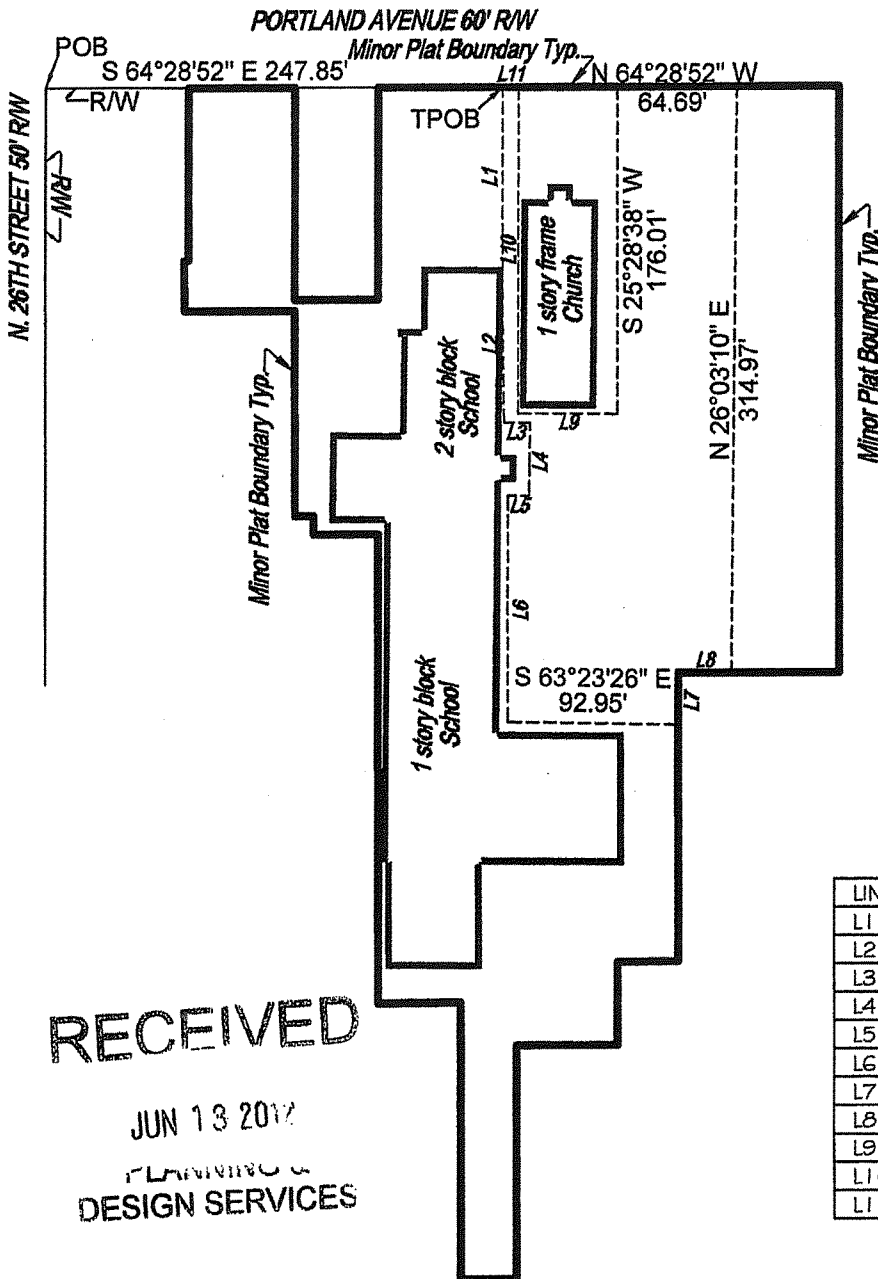
Thence South 25 degrees 31 minutes 08 seconds West 97.59 feet; thence South 24 degrees 57 minutes 38 seconds West 82.85 feet; thence South 63 degrees 56 minutes 50 seconds East 14.09 feet; thence South 26 degrees 03 minutes 10 seconds West 39.16 feet; thence North 63 degrees 56 minutes 50 seconds West 11.52 feet; thence South 25 degrees 37 minutes 27 seconds West 121.35 feet; thence South 63 degrees 23 minutes 26 seconds East 92.95 feet; thence North 25 degrees 31 minutes 08 seconds East 27.78 feet; thence South 64 degrees 28 minutes 52 seconds East 28.53 feet; thence North 26 degrees 03 minutes 10 seconds East 314.97 feet; thence with the southerly right of way line of Portland Avenue North 64 degrees 28 minutes 52 seconds West 64.69 feet; thence South 25 degrees 28 minutes 38 seconds West 176.01 feet; thence North 65 degrees 02 minutes 22 seconds West 54.10 feet; thence North 24 degrees 58 minutes 41 seconds East 175.50 feet; thence with the southerly right of way line of Portland Avenue North 64 degrees 28 minutes 52 seconds West 8.66 feet to the True Point of Beginning, containing 0.73 acres, more or less.

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PLOT PLAN OF  
 THE RECIPROCAL ACCESS  
 EASEMENT  
 BETWEEN PORTLAND AVE.  
 CHURCH OF CHRIST  
 AND  
 PORTLAND CHRISTIAN  
 SCHOOL SYSTEM, INC.

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LINE	BEARING	DISTANCE
L1	S 25°31'08" W	97.59'
L2	S 24°57'38" W	82.85'
L3	S 63°56'50" E	14.09'
L4	S 26°03'10" W	39.16'
L5	N 63°56'50" W	11.52'
L6	S 25°37'27" W	121.35'
L7	N 25°31'08" E	27.78'
L8	S 64°28'52" E	28.53'
L9	N 65°02'22" W	54.10'
L10	N 24°58'41" E	175.50'
L11	N 64°28'52" W	8.66'

Sheet	Dwn by: BC	Chk by: NG	Scale: 1" = 100'
1	Date: 4/30/2012	Project No: 2003-003B	
Of	<b>EXHIBIT "B"</b>		
1	RECIPROCAL EASEMENT AGREEMENT PORTLAND AVE. CHURCH OF CHRIST MINOR PLAT LOUISVILLE, KENTUCKY		
Revisions:			

**RENAISSANCE DESIGN BUILD, INC.**

117 S Indiana Avenue  
 Sellersburg, IN 47172

Tel: 812-246-5897 Fax: 812-248-4320  
[www.renaissancedesignbuild.com](http://www.renaissancedesignbuild.com)

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EXHIBIT "A"  
 RECIPROCAL ACCESS EASEMENT BETWEEN  
 PORTLAND AVENUE CHURCH OF CHRIST  
 AND  
 PORTLAND CHRISTIAN SCHOOL SYSTEM, INC.  
 LEGAL DESCRIPTION

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Thence South 25 degrees 31 minutes 08 seconds West 97.59 feet; thence South 24 degrees 57 minutes 38 seconds West 82.85 feet; thence South 63 degrees 56 minutes 50 seconds East 14.09 feet; thence South 26 degrees 03 minutes 10 seconds West 39.16 feet; thence North 63 degrees 56 minutes 50 seconds West 11.52 feet; thence South 25 degrees 37 minutes 27 seconds West 121.35 feet; thence South 63 degrees 23 minutes 26 seconds East 92.95 feet; thence North 25 degrees 31 minutes 08 seconds East 27.78 feet; thence South 64 degrees 28 minutes 52 seconds East 28.53 feet; thence North 26 degrees 03 minutes 10 seconds East 314.97 feet; thence with the southerly right of way line of Portland Avenue North 64 degrees 28 minutes 52 seconds West 64.69 feet; thence South 25 degrees 28 minutes 38 seconds West 176.01 feet; thence North 65 degrees 02 minutes 22 seconds West 54.10 feet; thence North 24 degrees 58 minutes 41 seconds East 175.50 feet; thence with the southerly right of way line of Portland Avenue North 64 degrees 28 minutes 52 seconds West 8.66 feet to the True Point of Beginning, containing 0.73 acres, more or less.

Document No.: DN2012118753  
 Lodged By: PORTLAND AVENUE CHURCH  
 Recorded On: 8/14/2012 02:09:39  
 Total Fees: 34.00  
 Transfer Tax: .00  
 County Clerk: BOBBIE HOLSCLAW-JEFF CO. KY  
 Deputy Clerk: ANASHO

