

**AGREEMENT FOR NAMING RIGHTS AND SPONSORSHIP OF
MCCRACKEN COUNTY HIGH SCHOOL FIELD HOUSES**

This Naming Rights Agreement (“Agreement”) is made and entered into on this the _____ day of _____, 2012, by and between the Board of Education of McCracken County, Kentucky (“Board”) and Southern Orthopedic Associates, P.S.C., d/b/a The Orthopaedic Institute of Western Kentucky (“Sponsor”).

WHEREAS, the Board manages and controls the McCracken County Public School District; and

WHEREAS, the Board desires to raise additional revenue to provide funding for co-curricular and extracurricular activities at McCracken County High School; and

WHEREAS, Sponsor desires to acquire naming rights for the football stadium at McCracken County High School and other associated rights, privileges, and benefits;

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions set forth herein, along with other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. SPONSORSHIP AND NAMING RIGHTS

During the Term of this Agreement, Sponsor shall have the following rights, benefits, and obligations:

1.1. The McCracken County High School (“MCHS”) indoor athletic field house (“Indoor Field House”) will be known as “The Orthopaedic Institute of Western Kentucky Indoor Field House.” The Board shall refer to the Indoor Field House as “The Orthopaedic Institute of Western Kentucky Indoor Field House” in its public communications and publications.

Prior to July 1, 2013 or as soon thereafter as reasonably possible, the Board shall install, at the cost of Sponsor, a sign on the outside of the Indoor Field House bearing the words “The Orthopaedic Institute of Western Kentucky Indoor Field House.” These signs may include Sponsor’s logos, marks, or other artwork compatible with the Indoor Field House’s and/or Board’s design standards, specifications, and aesthetic characteristics, subject to Board approval and any restrictions or limitations imposed by law or any governmental body exercising or possessing administrative, regulatory, or approval authority over Board.

1.2. The McCracken County High School (“MCHS”) football/soccer field house (“Fall Field House”) will be known as “The Orthopaedic Institute of Western Kentucky Fall Field House.” The Board shall refer to the Fall Field House as “The Orthopaedic Institute of Western Kentucky Fall Field House” in its public communications and publications.

Prior to July 1, 2013 or as soon thereafter as reasonably possible, the Board shall install, at the cost of Sponsor, a sign on the outside of the Fall Field House bearing the words “The Orthopaedic Institute of Western Kentucky Fall Field House.” These signs may include

Sponsor's logos, marks, or other artwork compatible with the Fall Field House's and/or Board's design standards, specifications, and aesthetic characteristics, subject to Board approval and any restrictions or limitations imposed by law or any governmental body exercising or possessing administrative, regulatory, or approval authority over Board.

1.3. The McCracken County High School ("MCHS") baseball/tennis/softball athletic field house ("Spring Field House") will be known as "The Orthopaedic Institute of Western Kentucky Spring Field House." The Board shall refer to the Spring Field House as "The Orthopaedic Institute of Western Kentucky Spring Field House" in its public communications and publications.

Prior to July 1, 2013 or as soon thereafter as reasonably possible, the Board shall install, at the cost of Sponsor, a sign on the outside of the Spring Field House bearing the words "The Orthopaedic Institute of Western Kentucky Spring Field House." These signs may include Sponsor's logos, marks, or other artwork compatible with the Spring Field House's and/or Board's design standards, specifications, and aesthetic characteristics, subject to Board approval and any restrictions or limitations imposed by law or any governmental body exercising or possessing administrative, regulatory, or approval authority over Board.

1.4. MCHS will provide recognition of Sponsor on the digital score-boards at the football stadium, soccer/track stadium and Strawberry Hills Arena at least once per event.

1.5. The rights enumerated in this Section are exclusive to the Sponsor. The Board shall not enter into agreements with other sponsors for naming rights sponsorships or services similar to the naming rights sponsorship and services enumerated in this Section. Nothing in this provision shall restrict the Board's ability or right to sell or permit additional advertising and sponsorship in other areas in and around the field houses except as may be expressly provided elsewhere in this Agreement.

2. SPONSORSHIP AND NAMING RIGHTS FEES

2.1. Rights Fees. In consideration of the rights, privileges, and benefits granted under this Agreement, Sponsor hereby agrees to contribute to Board Rights Fees as follows:

- a. Indoor Field House, \$80,000 payable over 10 years at the rate of \$8,000 per year;
- b. Fall Field House, \$80,000 payable over 10 years at the rate of \$8,000 per year;
- c. Spring Field House, \$40,000 payable over 10 years at the rate of \$4,000 per year;
- d. Athletic Training Supplies Stipend of \$30,000 payable over 10 years at the rate of \$3,000 per year;
- e. Sponsor will provide a certified athletic trainer to MCHS during the school year (3/4 full year). The trainer will work with all athletic programs, attend all home football games, attend basketball, soccer, baseball, softball and other games (including away games) on a mutually agreeable schedule not to exceed forty (40) hours per week. Sponsor will charge MCHS \$19,500 annually for the trainer. A

savings of \$18,000 annually will be realized by MCHS for the actual costs of the full time trainer of \$50,000 salary and benefits. Sponsor trainer will interview and appoint four high school students a year to shadow the trainer. This program will provide prospective students with hands on athletic training experience as well as develop the valuable relationships needed in the field in order to further ones aspirations in the profession of certified athletic training; and

f. Free physicals twice a year for all McCracken County High School athletes on dates that are mutually agreeable to Sponsor and the Athletic Department of McCracken County High School.

The first installment of the Rights Fees shall be due and payable January 1, 2013. All annual installments thereafter shall be due and payable on the 1st day of July of each year beginning on the 1st day of July, 2014 and continuing annually until paid in full.

2.2. Tax Consequences. It is the intent of the parties hereto that the contributions of Sponsor made pursuant to this Agreement shall be deductible from federal, state, and local income taxes to the fullest extent allowed by law. **Sponsor will consult with its accountants, attorneys, and other tax advisors regarding the deductibility of the contributions, and Sponsor expressly represents and agrees that the Board and/or its agents have not made, and Sponsor has not relied upon, any promise, covenant, warranty, representation, assurance, or other statement regarding the deductibility or other tax implications of Sponsor's contribution. Any findings or ruling regarding the deductibility of or other tax implications resulting from Sponsor's contributions hereunder shall not affect the validity of this Agreement.**

3. TERM AND TERMINATION

3.1. Ten Year Term. This Agreement shall commence upon its execution by the parties and shall continue for a period of approximately Ten (10) years, ending on the 30 day of June, 2023 ("Term"), unless previously terminated as provided herein or as otherwise agreed to in writing by the parties.

3.2. Termination Without Cause. Upon the giving of thirty (30) days written notice, the Board may terminate this Agreement without cause in its sole discretion. If the Board terminates this Agreement without cause under this provision, the Board shall refund to Sponsor a pro-rated amount based on the total amount of the annual Rights Fees and number of full months remaining in the current school year (e.g., if the Agreement is terminated after six (6) months, the Sponsor shall receive a refund equivalent to 50% of the Rights Fees paid for the current school year).

4. MORALS CLAUSE

If either party hereto or any of its officers, directors, board members, principals, employees, agents, or representatives commits any act which, in the reasonable and good faith opinion of the other party, would disparage or impair the reputation and integrity of the other party hereto (including, without limitation, being convicted of any felony or a crime involving moral turpitude, ethical violations or any other act of moral turpitude), the other party hereto shall have

the right to terminate this Agreement without liability to the other party upon thirty (30) days written notice.

5. DEFAULT AND REMEDIES

5.1. Either party may cancel and terminate this Agreement, without liability to the other party, if the defaulting party repudiates, breaches, or otherwise fails to comply with any of the terms of this Agreement (“default”), including the failure to make timely and complete payment of all installments. If either party defaults hereunder, the other party shall serve a written notice specifying the nature of the default and demanding that the default be cured. If the defaulting party does not cure the default within fifteen (15) days after receipt of this notice, the non-defaulting party may terminate this agreement on a date certain designated in such notice, which date may not be less than thirty (30) days after the date of such notice.

5.2. Either party may cancel and terminate this Agreement, without liability to the other party, upon the happening of any of the following or any other comparable event: (1) insolvency of the other party; (2) filing of any petition by or against the other party under any bankruptcy, reorganization, or receivership law; (3) execution of any assignment for the benefit of the other party’s creditors; (4) the death, incompetence, dissolution, sale, assignment, transfer, or acquisition of the other party; or (5) the destruction or occurrence of any other act that renders the field houses unusable or unsuitable for high school facilities as determined in the sole and exclusive discretion of the Board.

5.3. Neither party shall be responsible for delays, lack of performance, or other default resulting from acts or events beyond the reasonable control of the party. Such acts shall include, but not be limited to, acts of God, fire, strikes, labor unrest, compliance with laws or regulations, riots, acts of war or terrorism, or any other conditions beyond the reasonable control of a party.

5.4. If the Board cancels and terminates this Agreement upon default by Sponsor, Sponsor shall be required and obligated to pay or reimburse the Board for all necessary and reasonable costs and expenses incurred to remove any and all signs and advertisements installed by the Board pursuant to this Agreement.

5.5. The foregoing remedies shall not be to the exclusion of any other right or remedy set forth in the Agreement or otherwise available in law or in equity.

5.6. The maximum liability of the Board to the Sponsor under any theory of law, including contract or tort, for a breach of the Agreement by the Board shall not exceed the amount of the Sponsorship and Naming Rights Fees paid by the Sponsor for the current school year.

6. ASSIGNMENT AND TRANSFER

Sponsor shall not voluntarily or by operation of law assign, transfer, sublease, or encumber all or any part of Sponsor’s rights, interests, duties, or obligations under this Agreement without the Board’s prior written consent. Any attempted assignment, transfer, subletting, or encumbrance shall be void and shall constitute a material breach of this Agreement and cause for termination of this Agreement without liability to the other party.

7. MISCELLANEOUS

7.1. The Board shall make its best effort to provide all benefits and rights enumerated in this Agreement; provided, however, that the provision of such benefits and rights are legal for the Board to provide and comply with all laws and regulations applicable to the Board's ability to provide such benefits and rights. Sponsor understands that such laws and/or regulations may change over the course of this Agreement and may affect the Board's ability to perform and provide some or all of the benefits and rights enumerated in this Agreement.

7.2. Reasonableness. Wherever either party to this Agreement is required to approve or consent to or be satisfied as to any matter, such party agrees that its approval, consent, or satisfaction shall not unreasonably be withheld or delayed.

7.3. Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the matters provided for herein, and supersedes any written or oral agreement, instrument, application, promotional material, brochure, website information, or other representation previously made, distributed or entered into by or on behalf of them.

7.4. Amendments. No amendment or modification to the Agreement shall be effective unless the amendment or modification is in writing and signed by both the Board and Sponsor.

7.5. Section Headings. Section and paragraph headings contained in this Agreement are included solely for convenience and are not intended to modify, explain, or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.

7.6. Notices. All notices, offers, consents, or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be provided by personal delivery or certified mail, and addressed to the address of the intended recipients at the following addresses:

To Board: Board of Education of McCracken County, Ky.
435 Berger Road
Paducah, KY 42003

To Sponsor: Southern Orthopedic Associates, P.S.C. d/b/a
The Orthopaedic Institute of Western Kentucky
4787 Alben Barkley Drive
Paducah, KY 42001

7.7. Attorneys' Fees. In the event that any party is required to commence legal proceedings to enforce the provisions of this agreement or to seek any other legal redress, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred in connection therewith.

7.8. Independent Contractor. Board and Sponsor shall be and act as independent contractors under this Agreement. The parties hereto understand and agree that this Agreement shall not be construed as an agency, joint venture, partnership, franchise, or employment

relationship between them. Nothing in this Agreement grants Sponsor any real property interest in the field houses, their improvements, fixtures, or appurtenances, the immediately surrounding area, or any other area, improvement, or land owned by Board.

7.9. Non-Waiver. Any waiver of any of the terms and provisions of the Agreement shall be effective only if set forth in writing and signed by the party to be charged. No delay or failure by any party to enforce any provision of the Agreement shall be construed as forfeiture or waiver thereof or any other right or remedy available to the party. No waiver by any party of any default or breach by any other party of its obligations under the Agreement shall be construed as a waiver or release of any subsequent default or breach.

7.10. Choice of Law/Forum. This Agreement shall be construed and enforced in accordance of the laws of the Commonwealth of Kentucky. The parties agree that any action, suit or other proceeding arising out of this Agreement shall be instituted only in any state or federal courts located in McCracken County, Kentucky, and the parties hereto consent to service, jurisdiction, and venue of such courts for all purposes.

The undersigned agree to the terms and conditions stated above.

Sponsor:

Date: _____

**Southern Orthopedic Associates, P.S.C.
d/b/a The Orthopaedic Institute of
Western Kentucky**

**Board of Education of McCracken
County, Ky.**

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____