AGREEMENT FOR NAMING RIGHTS AND SPONSORSHIP OF

MCCracken County High School BASKETBALL ARENA

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 ________________________ (“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 Basketball Arena 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”) Basketball Arena (“Arena”) will be known as “Strawberry Hills Pharmacy Arena.” The Board shall refer to the Arena as “Strawberry Hills Pharmacy Arena” in all of its publications and communications.

1.2. Prior to the first MCHS event held in Arena or as soon thereafter as reasonably possible, the Board shall install a sign on the hall entryway to Arena bearing the words “Strawberry Hill Pharmacy Arena.” These signs may include Sponsor’s logos, marks, or other artwork compatible with the Arena’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. Sponsor shall have the right to design advertisements or other signs for installation by the Board on the Arena scoreboard, admission/ticket facility, and concessions area. Such advertisements or signs shall be compatible with and conform to the Board’s design standards and specifications for advertisements at Arena, and are subject to approval of the Board or its designee.

1.4. Sponsor shall have the right to design an advertisement or other recognition that will comprise the back cover of the MCHS Media Guide. Such advertisement or recognition shall be compatible with and conform to the Board’s design standards and specifications for advertisements or recognitions in the MCHS Media Guide, and is subject to approval of the Board or its designee.

1.5. The rights enumerated in this Section are exclusive to the Sponsor. The Board shall not enter into agreements with other sponsors for sponsorships or services similar to the sponsorship and services that are subject to this Agreement.

2. ADDITIONAL BENEFITS
As further consideration for Sponsor’s agreement to make the payments and discharge its other obligations hereunder, the Board will provide to Sponsor the following additional benefits, subject to all applicable terms and conditions:

2.1. Eight (8) reserved chair seats located near mid-court for home varsity basketball games

2.2. Eight (8) “Mustang Passes” for General Admission to all MCHS sporting events;

2.3. Eight (8) Hospitality Room passes for home varsity football and basketball games;

2.4. Three (3) parking passes located near Arena;

2.5. Four (4) reserved chair seats located near 50 yd line for home varsity football games;

2.6. Signage: Video Board scoreboard panel, Center scoreboard bottom panel, Entry ticket booth, two basketball floor decals;

2.7. Exclusive Beverage Cup Sponsor with Pepsi acknowledgment included; and

2.8. Exclusive Pharmacy related advertising rights in Basketball Arena.

3. SPONSORSHIP AND NAMING RIGHTS FEE

3.1. Rights Fee; Installments. In consideration of the rights, privileges, and benefits granted under this Agreement, Sponsor hereby agrees to contribute to Board a Rights Fee in the total amount of $200,000. An annual installment in the amount of $20,000 shall be due and payable upon execution of this Agreement, subsequent annual payments shall be made on July 1 of each year in the amount $20,000 for a ten (10) year term.

3.2. Prepayment. Sponsor may choose to pay the full amount of the Rights Fee or then remaining balance at the time of execution or at any point prior to the second anniversary of the execution of this Agreement without penalty. Prepayment by Sponsor will have no effect on any other term or provision of this Agreement.

3.3. 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.

4. TERM AND TERMINATION

4.1. 10-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 last day of the school year (June 30)
following the tenth (10th) basketball season at Arena (“Term”), unless previously terminated as provided herein or as otherwise agreed to in writing by the parties. Based on the date the Arena currently is anticipated to open, it is expected that the term of this Agreement shall expire on June 30, 2023.

4.2. 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 Rights Fee and number of full months remaining in the current Term (e.g., if the Agreement is terminated after four (4) years, the Sponsor shall receive a refund equivalent to 60% of the Rights Fees).

5. 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.

6. DEFAULT AND REMEDIES

6.1. 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.

6.2. 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 Arena unusable or unsuitable for high school basketball games as determined in the sole and exclusive discretion of the Board.

6.3. 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.

6.4. 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.

6.5. 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.
6.6. The maximum liability of the Board to the Sponsor under any theory of law, including contract or tort, for a breach by the Board under the Agreement shall not exceed the amount of the Sponsorship and Naming Rights Fee paid by the Sponsor.

7. 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.

8. INDEMNIFICATION

8.1. Sponsor shall defend, indemnify and hold harmless Board, including for purposes of this section its Board members, officers, agents, employees, volunteers, and others acting on its behalf, from and against all claims, demands, damages, liability, losses, payments, suits, actions, proceedings, and judgments of every nature and description, including attorneys’ fees and costs, presented, brought, or recovered against Board for, or on account of any liability which may be incurred by reason of, or arising out of, Sponsor’s performance under this Agreement. Notwithstanding the foregoing, Sponsor shall not be liable for the defense or indemnification of the Board for claims, actions, complaints or suits arising out of the sole negligence or willful misconduct of the Board.

8.2. Board shall defend, indemnify and hold harmless Sponsor from and against all claims, demands, damages, liability, losses, payments, suits, actions, proceedings, and judgments of every nature and description, including attorneys’ fees and costs, presented, brought, or recovered against Sponsor for, or on account of any liability which may be incurred by reason of, or arising out of, Board’s performance under this Agreement. Notwithstanding the foregoing, Board shall not be liable for the defense or indemnification of the Sponsor for claims, actions, complaints or suits arising out of the sole negligence or willful misconduct of the Sponsor.

9. MISCELLANEOUS

9.1. 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.

9.2. 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.

9.3. 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.

9.4. 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.
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.

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: Daniel Jones, Owner
Strawberry Hills Pharmacy
2700 New Holt Rd. Ste. D
Paducah, KY 42001

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.

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.

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.

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:                                            Board of Education of McCracken County, Ky.

By: ________________________________                By: ________________________________
Title: ________________________________             Title: ________________________________
Date: ________________________________              Date: ________________________________