North Canton City Council
Finance and Property Committee

Ordinance No. 14 - 2015

An ordinance authorizing the Mayor of the City of North Canton to enter into a management agreement to have the North Canton YMCA manage the City's Dogwood Swimming Pool and associated facilities' day-to-day operations, and declaring the same to be an emergency.

WHEREAS, the City and the YMCA share the same goals and objectives of providing North Canton's residents and guests with safe, reliable, and efficient summer recreational activities; and

WHEREAS, the City recognizes the YMCA's vast experience and expertise in conducting aquatic programs for families, adults, and youths at its branches in Stark and adjoining counties; and

WHEREAS, City residents and guests will derive substantial benefits from the YMCA's activities and programs together with membership discounts; and

WHEREAS, it is the City and the YMCA's mutual desire that the YMCA manage the City's Dogwood Swimming Pool and associated facilities' day-to-day operations;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NORTH CANTON, COUNTY OF STARK, AND STATE OF OHIO:

Section 1. That the Mayor of the City of North Canton is hereby authorized to enter into a management agreement the North Canton YMCA for it to manage the City's Dogwood Swimming Pool and associated facilities' day-to-day operations.

Section 2. That if a provision of this ordinance is or becomes illegal, invalid, or unenforceable, that shall not affect the validity or enforceability of any other provision of this ordinance.

Section 3. That this ordinance is hereby declared to be an emergency measure necessary for the preservation of the health, safety, and peace of the City of North Canton, and further necessary to enable the parties herein to plan and prepare for the 2015 summer season so that they may timely provide valuable, safe, and healthy summer recreational and exercise activities for the City's residents and guests; wherefore, provided it receives the affirmative vote of six or more members of Council elected thereto, this ordinance shall take effect and be in full force immediately upon its adoption by Council and approval by the Mayor. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

Passed in Council this 23rd day of March 2015

David Held, Mayor

Signed: 3-23, 2015

ATTEST:

Mary Beth Bailey, Clerk of Council

MANAGEMENT AGREEMENT BY AND BETWEEN
THE CITY OF NORTH CANTON, OHIO
AND
THE YMCA OF CENTRAL STARK COUNTY

THIS MANAGEMENT AGREEMENT ("Agreement") is made between the CITY OF NORTH CANTON, a home rule municipal corporation of the State of Ohio ("City"), and the YMCA OF CENTRAL STARK COUNTY, Inc., an Ohio nonprofit corporation ("YMCA"), acting through its officers as duly authorized by its Board of Directors.

RECITALS

WHEREAS, the City and the YMCA share the same goals and objectives of providing North Canton's residents and guests with safe, reliable, and efficient summer recreational activities; and

WHEREAS, the City recognizes the YMCA's vast experience and expertise in conducting aquatic programs for people and families of all ages at its branches in Stark and adjoining counties; and

WHEREAS, City residents and guests will derive substantial benefits from the YMCA's activities and programs together with membership discounts; and

WHEREAS, it is the City and the YMCA's mutual desire that the YMCA manage the City's Dogwood Swimming Pool and associated facilities' day-to-day operations;

NOW, THEREFORE, in consideration of the mutual promises, representations, and covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE 1. DEFINITIONS

1.01 **"Base Monthly Telephone Service Charges"** means local telephone service fees and DOES NOT include fees or charges for long distance, directory assistance, collect calls, Internet, additional facsimile charges, or other such calls or extra charges invoiced by the telephone service provider to the Premises.

1.02 **"City"** means the City of North Canton, Ohio.

1.03 **"Parties"** means, collectively, the City of North Canton and the YMCA of Central Stark County, Inc.

1.04 **"Premises"** means North Canton's Dogwood Swimming Pool and associated facilities and grounds.

1.05 **"YMCA"** means the YMCA of Central Stark County, Inc.

ARTICLE 2. TERM OF AGREEMENT

2.01 Term. The term of this Agreement (Term) shall be from the date of its execution until and including the time necessary to reasonably prepare for and wind up season 2015 operations, in addition to preparing the accounting described herein, which shall not exceed October 15, 2015.

ARTICLE 3. SAFE AND PERMITTED USE OF PREMISES

3.01 Condition of Premises. The YMCA accepts the Premises in its present condition, finds it suitable for the its intended purposes, and further acknowledges that it is thoroughly familiar with such condition by reason of a personal inspection, and does not rely on any City representations as to the condition of the Premises, or its suitability for the purposes intended.

3.02 Alteration of the Premises. The YMCA shall not make any alterations to the Premises without the City's prior written consent signed by the City's Mayor or designee. Any permanent improvement undertaken during this Agreement shall remain the property of the City at the conclusion of this Agreement.

3.03 Permitted Use of Premises. The YMCA warrants that it is qualified to provide the management services described herein and has, or prior to performing any of the services described in this Agreement, shall obtain, and maintain all necessary certificates and licenses to the extent such are necessary, and required by law.

The YMCA shall use the Premises only for the purpose of operating a municipal swimming pool and activities associated therewith, consistent with other YMCA facilities, and shall not use any part of the Premises for any use or purpose that violates any applicable law, regulation, or ordinance.

3.04 Safety Inspections. The City shall conduct periodic and regular inspections as may be required of the Premises to insure compliance with fire, safety, and sanitation regulations, and other provisions contained in this Agreement or in the City's Codified Ordinances. The City shall notify the YMCA of its findings, specifying any items requiring attention. The YMCA agrees to grant the City the right to access the Premises for inspections during normal business hours, and after hours, with prior notice as may be necessary. Failure to conduct any inspections as may be required shall not operate as a waiver of the City's right to conduct these inspections and shall not be considered a default of the terms of this Agreement.

3.05 Fire Code Inspections. The YMCA shall permit the City's fire inspectors or authorized agents to inspect the Premises, and the YMCA and the City shall comply with all requirements necessary to bring the Premises into compliance with the State Fire Code and City Codified Ordinances regarding fire safety, as such provisions exist or may later be amended subject to the maintenance and repair obligations in this Agreement. The YMCA shall maintain in proper

condition accessible fire extinguishers of a number and type approved by the City Fire Chief or authorized agents for the particular hazard involved.

3.06 Maintenance and Repair.

a. **City Obligations.** Except for repairs required by the YMCA under (b) below, the City will at all times during this Agreement, keep and maintain, or cause to be kept and maintained, the Premises, including the swimming pool, and all other buildings and improvements erected on the Premises, in a good state of repair (except for reasonable wear and tear) at the City's sole expense, including the parking area, bathhouses, concession room, roofs, foundation, electrical, plumbing, pumps, filters, gauges, deck, grounds, and any apparatuses associated with the operation of a municipal swimming pool, and pool features, such as diving boards, ingress/egress steps, as well as lawn mowing, and trash removal. Such maintenance and repairs will be made expeditiously and in the same manner as a person generally proficient in that industry or trade performing under similar circumstances.

After the City receives notice of needed repairs pursuant to (b) below, the City shall promptly inspect the Premises to determine the extent of repair required. The City shall complete the repairs in an expeditious fashion. Needed repairs and/or replacement as used in this subsection exclude obligations of the YMCA in (b) below.

b. **YMCA Obligations.** The YMCA shall provide the City with prompt notice of fire, accident, casualty, damage, or dangerous/defective conditions. For repair and/or replacement expenses estimated to be less than or equal to $500, the YMCA shall be responsible to timely make a repair and/or replacement. For repair and/or replacement expenses estimated to be greater than $500, the YMCA shall promptly notify the City Administrator of the needed repair/replacement.

ARTICLE 4. YMCA MANAGEMENT DUTIES AND RESPONSIBILITIES

4.01 To the Public. The YMCA shall operate and manage the Premises in order to offer exercise, and recreational activities to the public, and shall be solely responsible for the safety and health of the public as related to water treatment, lifeguards, and the condition of the Premises during operations, and shall do so in a diligent manner and in accordance with the applicable standards for health and safety considerations in the industry.

4.02 Equal Opportunity Employer. The YMCA represents that it is an Equal Opportunity Employer and agrees not to discriminate against employees or applicants for employment by reason of race, color, religion, sex, military status, national origin, disability, age, or ancestry, nor knowingly permit subcontractors to do so.

4.03 Entry. Access and entry into the Premises shall be open to the general public and shall be available to any person whomsoever; however the YMCA may deny admittance to any person for disciplinary reasons.

4.04 Discount Prices. Current Central Stark County YMCA members shall receive a 25% discount for a 2015 season pass.

4.05 Dates and Hours of Operation. The City shall make its best efforts to have the Premises "ready to swim" on May 23, 2015. Weather permitting, the YMCA shall maintain pool operations on the following dates: May 23-25, May 30-August 16, and August 22-23, 2015. Daily operation of the swimming pool shall include public hours of at least 11:00 a.m. until 8:00 p.m.

4.06 Plans and Rules. On or before the beginning of the term hereof, the YMCA shall furnish to the City a written Emergency Action Plan; a written Lifeguard Plan, which will set out the number of lifeguards it will have on duty per number of patrons; a written copy of the Pool Rules and Conduct; and proof of proper certification for all staff required to have such training and certification prior to beginning of said duties.

4.07 YMCA Management and Supervisory Responsibilities.

The YMCA shall be responsible to:

a. Hire and supervise a qualified staff in accordance with applicable state and federal employment laws, while providing a reasonable preference to 2014 season re-hires, who will perform all duties associated with the operation of the Premises, including, but not limited to: advertising and selling pool passes; daily admission sales; lifeguard duties; concession stand duties including obtaining initial inventory of products for concession sales and replenishing concession items as needed; janitorial and custodial service; facilities preparation; minor system and mechanical repairs/replacements; pool water chemical balance monitoring and correction; bookkeeping; and all associated duties and supervision of the operations of the Premises.

b. Provide supervision by a person qualified in the fields of lifeguard training, CPR, first aid, equipment operation, and pool sanitation. Individuals are considered qualified in lifeguard training, CPR, and first aid if they hold a current, appropriate Red Cross or YMCA certification.

c. Ensure employees are properly certified and trained prior to beginning their duties.

d. Pay all staffing costs, i.e. salaries, withholding and employment taxes, Workers' Compensation premiums, and insurance costs, in accordance with the existing YMCA of Central Stark County salary and administration plan.

e. Test and record the pool water's pH and disinfectant residuals no less than three times daily: when the pool is open; before any programs begin in the morning, mid-afternoon; and before an evening session.

f. Maintain the Premises in a clean and hygienic manner in keeping with standards established by the City and licensing agencies of the state or federal government and accepted

pool standards, together with providing all cleaning paper supplies, disinfectant solutions, soap solution for bathroom dispensers, and tissue for bathroom stalls.

g. Regularly inspect and notify the City of any deficiencies or other safety issues observed requiring attention. Some items may include, but not limited to lifeguard stands, diving boards, ingress/egress steps, all plumbing fixtures, pool deck, doors, fence, and any other pool features and associated items and areas.

h. Keep and maintain the books and records related to the Premises in accordance with sound business practices and generally accepted accounting principles and in formats as may be required by the Ohio Auditor of State, and to provide the City with a pro-forma budget for future seasons.

4.08 Waste and Nuisance. The YMCA shall neither commit nor allow to be committed any waste on the Premises, nor shall the YMCA maintain, commit or permit the maintenance or commission of any nuisance on the Premises or use the Premises for any unlawful purpose.

ARTICLE 5. UTILITIES

5.01 Payment by City. The City, at its sole cost and expense, will incur the cost to provide all gas, water, sewer, electric utilities, and base monthly service charges for telephones for YMCA use at the Premises.

5.02 Payment by YMCA. The YMCA, at its sole cost and expense, will incur the cost to provide the chemicals and testing equipment necessary to ensure the swimming pool's water chemistry and chemical balance is safe and clean by the YMCA's regularly monitoring and recording of the pool's pH and disinfectant residuals.

ARTICLE 6. AUDITING

6.01 Audits. The YMCA agrees that representatives of the City's Director of Finance, or other authorized City representatives, shall have access to, and the right to audit, examine, or reproduce, any and all records of the YMCA related to the performance under this Agreement. The YMCA shall retain all such records for a period of five years after the date the record was created, or until all audit and litigation matters that the City has brought to the attention of the YMCA are resolved, whichever is longer. The City and the YMCA shall refund to the other party any overpayments disclosed by any such audit.

6.02 Access to Records. The City shall have access, at all reasonable times, to all YMCA records related to any Premises operations, including, but not limited to pool testing results, lifeguard certifications, in-service training records, or any other documents related to the Dogwood Swimming Pool operations.

6.03 End-of-Season Report. No more than sixty days after the end of the 2015 operating season hereunder, the YMCA shall supply to the City an end-of-season report detailing all fees collected for pool passes, daily admission fees, rental fees; a report of daily attendance figures, including a detail of the number of pre-paid family and individual pass patrons, cash patrons, event sales, concession sales, and a detailed statement of revenues and expenses for the Premises during the term hereof.

ARTICLE 7. INSURANCE REQUIREMENTS

7.01 Insurance. The YMCA shall carry the following insurance during the term of this Agreement and any renewal term:

a. **Commercial General Liability Coverage.** The YMCA shall carry Commercial General Liability ("CGL") Insurance written on ISO form CG 00 01 10 01 (or its equivalent) with limits of $1,000,000 per occurrence and $2,000,000 in the aggregate. The City (including its directors, officers, affiliates, and employees) must be named as an additional insured on the CGL for liability arising out of the acts or omissions of the YMCA. The coverage afforded to the City shall be primary to any other insurance carried by the City, and the City's coverage shall contribute on an excess basis to any loss paid under the YMCA's CGL policy on behalf of the City. Commercial General Liability coverage (including City's status as additional insured) shall be maintained for at least two years after termination of this contract.

b. **Commercial Automobile Liability Coverage.** The YMCA shall carry Commercial Automobile Liability Insurance covering all owned, leased and non-owned vehicles used in connection with the work to be performed under this contract, with limits of not less than $1,000,000 combined single limit per accident for bodily injury and property damage. The City shall be afforded coverage under this policy for any liability arising out of the acts or omissions of the YMCA.

c. **Umbrella Liability Coverage.** The YMCA shall carry a policy to provide coverage excess of General Liability and Automobile Liability in the amount of $4,000,000. The YMCA may satisfy this requirement by providing additional limits under the primary policies.

d. **Environmental Coverage.** For claims made as a result of chemicals used or stored by the YMCA at the Premises.

The YMCA shall also provide an Additional Insured/Primary and Non-Contributory Endorsement indemnifying the City. All policies of liability insurance required to be maintained by the YMCA shall name the City as an additional insured with primary/noncontributory coverage; shall be issued by insurers with an A.M. Best rating of not less than "A-, IX"; and shall provide that coverage shall not be canceled or non-renewed without reasonable advance notice to the City. The YMCA shall annually provide the City a certificate of insurance as evidence of the above coverage.

In addition to the above, the YMCA shall carry Workers' Compensation Insurance (including occupational disease) in compliance with Workers' Compensation statutes of Ohio for all of its employees providing services at the Premises. The YMCA shall also carry Employer's Liability Insurance with minimum limits of $500,000 each accident; $500,000 for disease (per employee); and $500,000 for disease (policy limit).

ARTICLE 8. RECORDS

8.01 Provision of Records. On a monthly basis, or at such intervals as may be requested, the YMCA shall provide the City current copies of season passes, itemized by zip code, family unit or as reasonably specified by the City, as well as financial, operational, and maintenance information related to the Premises, and all other information reasonably deemed necessary by the City and the YMCA. The YMCA shall account for the Premises' revenue and operating expenses and shall keep or cause to be kept proper books of record and account in such manner as is necessary to show the complete financial results of operation of the Premises.

8.02 Open Records. The YMCA acknowledges that the City is required to comply with Ohio's Public Record Act, R.C. 149.43 et seq. Under the Public Records Act, this Agreement, and records related to this Agreement, which are in City's possession, or to which the City has access, are presumed to be public and the City may release such records to the public unless an exception described in the Act applies to a record. To the extent such documents are subject to said law and are in the YMCA's possession, it shall make such documents available during the course of this Agreement and copies of the same shall be turned over to the City at the conclusion of this Agreement.

8.03 Notice of complaints or violation reports. The YMCA shall promptly notify the City of any complaints or reports of violations of law that have occurred at the Premises and that are significant in nature and that have a material effect on the operations of the Premises.

ARTICLE 9. MANAGEMENT FEE

9.01 Management Fee. As consideration for the YMCA undertaking management and operation of the Premises during the 2015 operating season, the City shall pay the YMCA a management fee totaling seven percent of the 2015 season's gross revenue of pool operations and concessions, up to a total of $16,000.00. Payment shall be due to the YMCA no later than 30 days after the YMCA's submission of its 2015 season-ending financial report.

9.02 Net Revenue. Upon the Parties reaching an agreement of the final revenue and expenses for the 2015 operating season, not including the City's capital improvement expenditures, the Parties shall equally divide the remaining 2015 season's net revenue, if any. One-half of the remaining 2015 season's net revenue, if any, shall be retained by the YMCA as additional compensation for performing the obligations contained in this Agreement. The remaining one-half of the 2015 season's net revenue, if any, shall be due to the City no later than 30 days after

the YMCA's 2015 season-ending financial report. No additional compensation shall be due to the YMCA if a negative net revenue results for the 2015 season.

ARTICLE 10. RESTORATION

10.01 Damage or Destruction. The City shall not be responsible, under any circumstances, for any damage to property belonging to the YMCA, its members, employees, agents, contractors, subcontractors, invitees, licensees, or trespassers, which may be damaged, stolen, or destroyed, and the YMCA hereby releases the City from any responsibility therefore. If the Premises or any other improvement constructed on the Premises is damaged or destroyed by fire or any other casualty, the City shall within 90 days from the date of the damage or destruction, begin to repair, reconstruct, or replace the damaged or destroyed Premises and pursue the repair, reconstruction, or replacement with reasonable diligence so as to restore the Premises to substantially the condition it was in before the casualty. But if beginning or completing this work is prevented or delayed by war, civil commotion, acts of God, strikes, governmental restrictions or regulations, or interferences, fire or other casualty, or any other reason beyond the City's control, whether similar to any of those enumerated or not, the time for beginning or completing the restoration (or both) will automatically be extended for the period of each such delay. In lieu of reconstructing the Premises, the Parties may mutually agree to declare this Agreement terminated.

10.02 Right to Remove Personal Property; Trade Fixtures. On or before the date of expiration of this Agreement, the YMCA shall vacate the Premises, remove all YMCA Property, and repair any damage to any buildings, structures, or improvements on the Premises resulting from the removal, restoring the Premises to a condition reasonably satisfactory to the City. If the City or the YMCA terminates this Agreement, the YMCA shall vacate the Premises, remove the YMCA Property, and restore the Premises within such time as the City shall reasonably designate, but in no event less than ninety days. In either event, if the YMCA shall fail or neglect to remove the YMCA's Property within a reasonable time after the Agreement termination date, not to exceed ninety days, and so restore the Premises, then the YMCA Property shall become the City's property.

ARTICLE 11. WAIVER OF SUBROGATION/IMMUNITY

11.01 Waiver of Subrogation. Each of the Parties hereto waives any and all rights of recovery against the officers, employees, agents, and representatives of the other party for loss of or damages to such waiving party or its property or the property of others under its control arising from any cause insured against under insurance policy(ies) hereunder or under any other policy of insurance carried by such waiving party in lieu thereof.

11.02 Waiver of Immunity. Nothing in this Agreement shall be deemed to constitute a waiver of any immunity or affirmative defense, which may be asserted by the City or the YMCA as to any claim of any third party.

11.03 Cause of Action. Nothing in this Agreement shall be construed in any manner, to create a cause of action for the benefit of any person not a party to this Agreement, or to create any rights for the benefit of any person not a party to this Agreement not otherwise existing at law.

ARTICLE 12. DEFAULT AND REMEDIES

12.01 Event of Default. The following shall be deemed events of default by the City or the YMCA under this Agreement:

a. The YMCA fails to use the Premises for conducting and operating the Premises as a municipal swimming pool facility.

b. The City or the YMCA fails to comply with any material term, provision, or representation of this Agreement.

c. The City or YMCA fails to provide services in accordance with the requirements of this Agreement.

12.02 Curing a Default.

a. If an event of default occurs, the non-defaulting party shall give written notice to the defaulting party that describes the default in reasonable detail. The defaulting party must commence curing such default within 14 calendar days after the time it receives the notice from the non-defaulting party, and then complete the cure within 90 days thereafter.

b. If the defaulting party does not substantially complete the cure within the stated time in (a) of this section, the non-defaulting party may terminate this Agreement by giving written notice of the termination; provided, however, if the default is not reasonably susceptible to cure within the stated time, the non-defaulting party will not exercise its right to terminate this Agreement so long as the defaulting party has commenced to cure the default within the required time and diligently completes the cure within a reasonable time without unreasonable cessation of the work to complete the cure.

12.03 Other Remedies. Any termination of this Agreement as provided in this article will not relieve the Parties from paying any sum or sums due and payable under this Agreement at the time of termination, or any claim for damages then or previously accruing under this Agreement. Any such termination will not prevent a party from enforcing the payment of any such sum or sums or claim for damages by any remedy provided for by law, or from recovering damages for any default under the Agreement. All rights, options, and remedies under this Agreement will be construed to be cumulative, and not one of them is exclusive of the other. Both Parties may pursue any or all such remedies or any other remedy or relief provided by law, whether or not stated in this Agreement.

ARTICLE 13. NOTICES

13.01 Notices. Any notice, demand, request, or other communication hereunder given or made by either party to the other shall be in writing and shall be deemed delivered, whether actually received or not, when deposited in the U.S. mail, postage prepaid, certified or registered mail, return receipt requested, and addressed to the Parties hereto at the respective addresses set out below, or at such other address as may they hereafter specify by written notice so given.

a. **City:**
City of North Canton
Attn: City Administrator
145 North Main Street
North Canton, OH 44720

b. **YMCA:**
North Canton YMCA Community Building
Attn: Executive Director
200 South Main Street
North Canton, OH 44720

ARTICLE 14. GENERAL PROVISIONS

14.01 Right of Entry and Inspection. The YMCA shall permit the City or its agents, representatives, or employees to enter the Premises during reasonable times and with reasonable notice, given the circumstances, for safety and fire inspections, to determine whether the Premises is being maintained or has been altered, for repairs, or for any other reasonable purpose.

14.02 No Third Party Rights. The provisions and conditions of this Agreement are solely for the benefit of the City and the YMCA and are not intended to create any rights, contractual or otherwise, to any other person or entity.

14.03 No Partnership or Joint Venture. The City and the YMCA agree that the relationship created by this Agreement is that of independent contractor and not an employer/employee relationship, a joint venture, or a partnership between the parties herein. The YMCA shall operate as an independent contractor and not as the City's officer, agent, servant, or employee. The YMCA shall have the sole and exclusive right to control the manner, time, place, and means by which it performs its services under this Agreement. The YMCA shall be solely and entirely responsible for its acts and for the acts of its employees, agents, and subcontractors in connection with the performance of Agreement. The YMCA shall be solely responsible for the compensation and benefits of the YMCA's employees and for payment of all federal, state, and local taxes payable with respect to any amounts paid to the YMCA under this Agreement. No payroll or employment taxes of any kind shall be withheld or paid with respect to payments to the YMCA, including, but not limited to, FICA, FUTA, federal and state personal income tax, state disability insurance tax, and state unemployment tax. Therefore, neither the YMCA nor its employees shall acquire rights to wages, Workers' Compensation benefits, unemployment compensation benefits or other rights or benefits that may be offered or provided to City employees. The YMCA's employees shall not act as or represent themselves as the City's agents, representatives, or employees.

14.04 Force Majeure. Each party to this agreement agrees to excuse the failure of another party to perform its obligations under this Agreement to the extent that failure is caused by an event of force majeure. Force majeure means an uncontrollable force or natural disaster, not reasonably within the power of the party claiming force majeure, and not any cause or event that the party could not use due diligence to avoid or prevent. Force majeure does not include economic or market conditions, which affect a party's cost, but not its ability to perform. The party invoking force majeure shall give timely and adequate notice to the other party of the event in the manner required by this Agreement.

14.05 Assignment and Successors. Neither the City nor the YMCA may assign, transfer, or otherwise convey any of their rights or obligations under this Agreement to any party without the prior written consent of the other party. An attempt to assign this Agreement without the consent of the other party shall be considered an event of default.

14.06 Applicable Laws. The laws of the State of Ohio shall govern this Agreement and the relationship created hereby. Venue for any action brought to interpret or enforce, or arising out of or incident to, the terms of this Agreement shall be in Stark County, Ohio.

14.07 Interpretation. In the event of any dispute over the meaning or application of any provision of this Agreement, this Agreement shall be interpreted fairly and reasonably, and neither more strongly for or against any party, regardless of the actual drafter of this Agreement.

14.08 Invalid Provision. It is agreed that, in the event any covenant, condition, or provision of this Agreement is held to be invalid by any court of competent jurisdiction, the invalidity of such covenant, condition or provision shall in no way affect any other covenant, condition, or provision; provided, however, that the invalidity of any such covenant, condition, or provision does not materially prejudice either the YMCA or the City in connection with the rights and obligations contained in the valid covenants, conditions or provisions of this agreement.

14.09 Severability of Provisions. If any of the provisions contained in this Agreement shall be held, for any reason, to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability, shall be construed as if such invalid, illegal, or unenforceable provision had never been in this Agreement.

14.10 Captions. Captions and headings used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

14.11 Sole Agreement. This Agreement constitutes the sole and only agreement of the Parties respecting the operations of the Premises.

14.12 Authority to Enter into Agreement. Each individual signing this Agreement on behalf of the City or the YMCA warrants that such individual is authorized to do so and that this Agreement will constitute the legally binding obligation of the entity that such individual represents.

14.13 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which shall, taken together, be considered one and the same agreement.

Agreed to by the Parties this 20 day of April, 2015.

FOR THE YMCA OF CENTRAL STARK COUNTY

Ben Wheeler, Executive Director,
North Canton YMCA

FOR THE CITY OF NORTH CANTON

Honorable David J. Held, Mayor

Timothy L. Fox, Director of Law
As to form and content.

Finance Director's Certificate.

I certify that the amount of up to $16,000.00, required to meet the contract agreement, obligation, payment, or expenditure for the above, has been lawfully appropriated, authorized, or directed for such purpose and is in the treasury or in the process of collection to the credit of the General Fund - Swimming Pool free from any obligation or certification outstanding.

Karen Alger, Director of Finance

March 23, 2015
Date