

AGREEMENT

1975 THIS AGREEMENT, Made and entered into this 6th day of ~~December~~ <sup>January</sup> 1974, in triplicate originals, by and between ERNEST REYNOLD FEIDLER and LYDIA K. FEIDLER, his wife, BENJAMIN H. VOGLER and JESSIE C. VOGLER, his wife, and ROBERT E. MATHE and ELINOR V. MATHE, his wife (hereinafter collectively called the "Complainants"), JOHN H. ARIAIL, JR., Trustee, W. FORBE RAMSEY, Trustee, and YOUNG MEN'S CHRISTIAN ASSOCIATION of the City of Washington, and the YOUNG MEN'S CHRISTIAN ASSOCIATION of the City of Washington, Arlington Branch (hereinafter collectively called the "YMCA") and ~~ARLINGTON COUNTY, VIRGINIA~~ *[Signature]*

WITNESSETH:

WHEREAS, Complainants have filed in the Circuit Court of Arlington County two lawsuits against the YMCA and Arlington County, styled respectively Feidler, et al v. Ariail, Trustee, et al, Chancery No. 23648 and Feidler, et al. v. Arlington County, et al., Chancery No. 23651; and,

WHEREAS, the Circuit Court of Arlington County has sustained the demurrers filed by the YMCA and Arlington County in Chancery No. 23651; and,

WHEREAS, the object of Chancery No. 23648 is to enjoin the YMCA from further construction and use of a certain facility known as the Arlington Y Tennis and Squash Club (hereinafter called the "Club") and to declare null and void the use permits and building permits issued with reference to the Club, to which end Complainants have made the following allegations:

1. that the activities being conducted and proposed to be conducted at the Club are not embraced within the use permit granted by Arlington County and the public advertising giving notice of the hearing on said use permit;
2. that the use permit issued for the Club became null and void because construction or operation of the Club had not commenced prior to May 6, 1973;
3. that the Club presents a different exterior appearance, size, shape and site plan from that which was advertised;
4. that the Club is being operated primarily for commercial gain in violation of the Arlington County zoning ordinance;
5. that the Arlington County Board issued the use permit for the Club in an arbitrary and capricious manner; and,
6. that the Club as built and operated will violate the Arlington County zoning ordinance.

WHEREAS, while specifically denying the truth or legal validity of any of the allegations set out above, the YMCA has agreed to take certain actions to remedy the grievances of Complainants with reference to the Club, which actions are specifically delineated below,

NOW, THEREFORE, for and in consideration of Two Thousand Seven Hundred Fifty Dollars (\$2,750.00) in hand paid to Complainants through their counsel, receipt of which is hereby acknowledged, for and in consideration of the mutual promises and undertakings set out herein, and for and in consideration of other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto covenant and agree as follows:

1. Complainants will abide by the decision of the Circuit Court of Arlington County as regards Chancery No. 23651, and agree not to appeal the sustaining of the demurrer.

2. Complainants agree to dismiss Chancery No. 23648 with prejudice; provided, however that the parties agree that this Agreement may be ratified by the Court and incorporated into the decree effecting such dismissal, and shall be subject in the future to specific performance and/or damages by any of the parties hereto but not subject to the contempt power of the Court.

3. Complainants stipulate and agree that upon the YMCA and Arlington County taking the actions outlined below, Complainants' grievances, specifically including, but not limited to those grievances in existence as of the date of this Agreement and which might allegedly be considered continuing grievances will be settled and not further pursued in any form or manner.

4. The YMCA agrees to provide additional screening for the Club, the purpose of which is to soften the appearance of the Club as seen from the residences of the Complainants, as follows:

- (a) the YMCA will plant non-deciduous trees of a uniform height of approximately four (4) feet between 13th Street and the Club;
- (b) the YMCA will plant non-deciduous trees of a uniform height of approximately seven (7) feet between the eastern corner of the five court building of the Club and previously existing YMCA building;
- (c) the YMCA agrees to plant trees or shrubs to screen the air conditioners servicing the Club which front on 13th Street;
- (d) the exact location and type of tree shall be decided by the mutual agreement of the parties.

5. The YMCA agrees to adequately maintain and keep up the Club, including the exterior of the building and grounds, and to establish a fund for that purpose in accordance with reasonable and generally established accounting procedures. It is understood and agreed that said fund will be under the sole control of, and administered by, the Management Committee of the Club. Determination of whether the fund is adequate for the above purposes shall be in the sole discretion of the Management Committee of the Club.

6. Complainants agree that they will not voice or otherwise in any manner instigate opposition to any application by the Club for a beer and/or wine permit, with the understanding that they are speaking for no other members of the Lynnbrook subdivision or the surrounding community in making this commitment. The parties hereto agree that any breach of this paragraph is a material breach of this Agreement.

7. The YMCA ~~and Arlington County~~ <sup>ARLINGTON</sup> agrees to cooperate with the Complainants to:

- (a) preserve and protect the residential character of the Lynnbrook Subdivision;
- (b) alleviate the traffic and parking problems on the streets surrounding the Club with the understanding that the YMCA will not be financially committed in such an undertaking nor will it be required to make any alterations or additions to its property except as specifically noted herein.

8. The YMCA agrees to provide whatever additional parking spaces are possible in the small parking lot at the entrance to the Club without any obligation on the part of the YMCA to physically enlarge said lot except the removal and repaving of the existing island if in fact removal of the island will provide additional parking spaces in accordance with all of the rules and ordinances of Arlington County dealing with off-street parking. Arlington County agrees to cooperate with the YMCA and the Complainants in this regard.

9. Complainants specifically waive any rights they may have to complain about the hours of operation of the Club, or file any actions of any nature concerning same, and hereby agree not to complain to any governmental or other authority, or file any actions or grievances except as specifically provided for in this paragraph, based upon alleged violations of the Arlington County zoning ordinance which have occurred to the date of

this Agreement or any other allegations which are the subject matter of Chancery No. 23648 and/or Chancery No. 23651, but it is understood and agreed by and between the parties hereto that Complainants reserve the right to file an action in common law nuisance only. It is specifically understood and agreed that for the purposes of this Agreement, the waiver contemplated by this paragraph includes all alleged violations of the zoning ordinances which are in existence as of the date of this Agreement and which may allegedly be considered continuing violations.

10. The YMCA agrees that one member of Lynnbrook Association selected by the Association will be installed and maintained as a voting member of the Management Committee for the Club, in its present or future form, for a period of twenty-one (21) years.

11. The YMCA agrees to construct no open paddle tennis, squash or handball courts on the roof of the Club for a period of five (5) years from the date of this Agreement. After such five (5) year period, Complainants specifically reserve the right to challenge the construction of such courts by an action of common law nuisance only. Complainants specifically agree not to object before any governmental authority to the construction of enclosed courts (either squash, paddle tennis or handball) on any or all of the second level of the buildings provided that the following conditions are met:

- (a) that such construction includes no more than a total of two (2) courts;
- (b) that said courts are confined as nearly as possible, to the rear half of the second level of said buildings;
- (c) that if enclosed, said courts have a roof line height no greater than the peak roof line of the existing five court building;
- (d) that said courts are constructed in conformance with the exterior structure materials used in the center core structure of the existing building; and
- (e) that said courts are appropriately sound-proofed so as not to intrude on the residential character of the neighborhood.

12. Complainants agree that the YMCA may install vending machines in the Club for snacks and refreshments. The YMCA agrees not to install or operate a lunchroom in the Club for a period of one (1) year from the date of this Agreement. For an additional succeeding period of four (4) years, the YMCA agrees not to install a lunchroom without the consultation and consent of Complainants first had and obtained. For the purposes of this Agreement, "lunchroom" is defined as a facility for on-premises food preparation. At the end of such five (5) year period, Complainants specifically reserve the right to challenge the operation of a lunchroom by an action of common law nuisance only.

13. Complainants agree that the YMCA may hold in-house, member-guest, amateur and "Money Tennis" tournaments for a period of five (5) years from the date of this Agreement. YMCA agrees not to hold any professional tour tournaments (such as World Tennis Championships, U.S. Open, etc.) where bleachers would be erected to accommodate spectators for a period of five (5) years from the date of this Agreement. After such five (5) year period set out above, it is understood and agreed that the YMCA may contract for, schedule and hold such tournaments as it desires, and that Complainants specifically reserve the right to challenge such tournaments by an action of common law nuisance only.

14. Complainants for a period of five (5) years agree not to voice or otherwise in any way instigate any action, other than already accomplished by Mr. Mathe, to have the Club placed on the real estate tax rolls of Arlington County, and the parties agree that any breach of this paragraph is a material breach of this Agreement. Complainants for a period of five (5) years agree not to testify or offer any information at any hearing on this question unless required to do so by subpoena.

15. The YMCA will offer, free of charge, a family membership in the Club, to run with the land for a period of twenty-one (21) years, to all owners of a fee in the Lynnbrook Subdivision, Arlington County, Virginia, upon the following terms and conditions:

(a) this offer shall remain open to all owners in residence for a period of ninety (90) days from the execution hereof and to all non-resident owners for a period of one hundred twenty (120) days from the execution hereof, after which time this offer shall lapse and expire as if same never existed;

(b) application for said membership shall be made in person, by a member of a particular family or by an attorney-in-fact under a bona fide written power of attorney, at the office of the Club, and an absolute condition of the offer and acceptance of said membership is that each family accepting such membership shall execute and ratify this Agreement and be bound by all the terms and conditions herein contained except for those provisions enumerated in paragraph 6. hereof. The signature of one adult member of each family or the aforementioned power of attorney shall be sufficient to bind the family;

(c) each family so accepting such membership shall pay the regular hourly charges of the Club for court time, and any other charges other than annual membership dues which may be levied on all members for the use of any of the Club facilities, and shall be bound by all rules and regulations of the Club as promulgated from time to time.

16. YMCA shall pay to Complainants the sum of Five Thousand Five Hundred Dollars as follows:

(a) Two Thousand Seven Hundred Fifty Dollars (\$2,750.00) shall be paid through Complainants' counsel to Complainants, and receipt of same is hereby acknowledged;

(b) the remaining Two Thousand Seven Hundred Fifty Dollars (\$2,750.00 shall be paid through Complainants' counsel to Complainants within six (6) months from the date of this Agreement.

17. Any material breach of the terms of this Agreement by any adult member of a family participating under this Agreement, as said breach may be determined by an appropriate court of law or equity, shall, among other things, cause the family membership herein granted to be forever cancelled and of no further force and effect as it applies to said family and to the residential property owned in Lynnbrook by said family. It is specifically understood and agreed that use of the word "material" in this paragraph does not limit the breaches contemplated in those preceding paragraphs in which the parties have agreed that a breach will be material, but extends to any material breach of any provision of this Agreement.

18. This document contains the entire Agreement between the parties, and there are no representations, promises or warranties, express or implied, except as herein contained. All parties executing and/or ratifying this Agreement represent that they have read and understand the terms and conditions thereof, and are relying upon their independent judgment and knowledge of the facts in executing or ratifying same. This Agreement may be modified, amended or superseded by a subsequent Agreement or amendment in writing signed by the parties to be charged, but may not in any way be orally modified, amended or superseded. This Agreement shall be binding upon the parties and all others who execute or ratify this Agreement and their respective heirs, executors, administrators, assigns, successors in interest, grantees and transferees. All parties collectively referred to as the YMCA represent that they are all parties necessary to the binding effect of this Agreement as it relates to the YMCA and the Club.

WITNESS the following signatures and seals as of the day, month

LAW OFFICES  
GARNETT & KOSTIK  
2000 N. 16TH ST.  
ARLINGTON, VA. 22216

and year first above written.

Ernest R. Feidler (SEAL)  
Ernest Reynold Feidler

Lydia K. Feidler (SEAL)  
Lydia K., Feidler

Benjamin H. Vogler (SEAL)  
Benjamin H. Vogler

Jessie C. Vogler (SEAL)  
Jessie C. Vogler

Robert E. Mathe (SEAL)  
Robert E. Mathe

Elinor V. Mathe (SEAL)  
Elinor V. Mathe

John H. Ariail, Jr., Trustee (SEAL)  
John H. Ariail, Jr., Trustee

W. Forbes Ramsey, Trustee (SEAL)  
W. Forbes Ramsey, Trustee

Young Men's Christian Association  
of the City of Washington

By: [Signature] President (SEAL)

[Signature] Gen. Exec (SEAL)

Young Men's Christian Association  
of the City of Washington, Arlington Branch

By: [Signature] (SEAL)

~~Arlington County, Virginia~~ [Signature]

By: [Signature] (SEAL)  
~~Jerry K. Emrich, County Attorney~~

The undersigned counsel hereby certify that: (1) the parties who have executed this Agreement have expressly given their respective counsel authority to delete any reference to Arlington County and to initial the deletions of Arlington County as a party in interest to this Agreement; (2) the parties agree that said counsel shall endorse this Agreement after their deletion of Arlington County as a party; (3) and said parties agree that said Agreement as deleted and executed by respective counsel is to be binding on all signatories hereto.

LAW OFFICES  
ARNETT & KOSTIK  
3000 N. 16TH ST.  
LINGTON, VA. 22216

[Signature]  
Griffin T. Garnett, Jr.  
Counsel for Complainants

[Signature]  
Frank E. Brown, Jr.  
Counsel for Defendants, Y.M.C.A., et al