

1854, Sept. 26. interest now owned by said Commonwealth, in and to that parcel of lands and flats one hundred and fifty feet in width and about three hundred and forty feet in length, which lies south of and adjoining to avenue numbered two, and east of and adjoining to avenue numbered one on the plan annexed hereto, subject to the conditions, covenants, and agreements of said bond, mortgage, and indenture tripartite.

Duly executed.

THE COMMONWEALTH AND THE BOSTON WATER POWER COMPANY.

AGREEMENT.

Parties.

Preamble relating to previous agreements.

1. Streets to be filled to a certain height.
2. Parties to build streets at option; except that they must complete

them when the Commonwealth completes its portion.

3. Commonwealth releases certain mortgaged property.
4. Water Power Company assents to use its streets for drainage on the same terms as are made by the Commonwealth.

AGREEMENT.¹

Parties.

1856, July 11.

THIS INDENTURE of two parts, made and concluded this 11th day of July, A. D. 1856, by and between the Commonwealth of Massachusetts, acting by its committee appointed under and in pursuance of the "Resolves in relation to lands in the Back Bay," approved May 30, A. D. 1856, of the first part, and the Boston Water Power Company, a corporation established by the laws of the Commonwealth, of the second part, witnesseth:—

¹ Recorded with Suffolk Deeds, Liber 719, p. 28.

Whereas, a certain indenture of three parts by and between the said Commonwealth, by its Commissioners, and the Boston Water Power Company and all such other owners and claimants, individual or corporate, of lands or flats in the Back Bay, as should, by signing, become parties thereto, was made on the 9th day of June, A. D. 1854, and was the same day executed by the Commonwealth, by its said Commissioners, and by the Boston Water Power Company, and has never been signed or executed by any other persons or corporations; ¹ and *whereas*, a certain other indenture by and between the Commonwealth, by its said Commissioners, and the Boston Water Power Company, was made and executed on the 26th day of September, A. D. 1854; ² and *whereas*, a certain mortgage was made and executed by the said Boston Water Power Company to the Commonwealth, on the said June 9, A. D. 1854, and is recorded in Suffolk Registry, book 665, page 151; and, *whereas*, by the Resolves first above mentioned, approved on the said May 30, A. D. 1856, the Committee therein mentioned are empowered, among other things, to “alter, reform, or amend all contracts, whether by deed or otherwise, heretofore made by the Commissioners on the Back Bay, subject to the approval of the Governor and Council, all parties to the same agreeing thereto.”

Preamble relating to previous agreements. 1856, July 11.

And *whereas*, the said Committee, in behalf of the Commonwealth, and the said Boston Water Power Company, the only parties to said indentures above mentioned, after mutual consultation and conference, have agreed upon certain alterations and modifications of the contracts heretofore made by and between the Commonwealth and the said Boston Water Power Company.

Now, therefore, in consideration of the premises, and of one dollar paid by each to the other, it is hereby agreed to alter, reform, and amend all contracts heretofore made, whether by deed or otherwise, by and between the Commonwealth, and the said Boston Water Power Company, in the following respects, that is to say,

¹ *Ante*, p. 234.

² *Ante*, p. 250.

Streets to be filled to a certain height.

1856, July 11.

First. The Commonwealth and the Boston Water Power Company and other persons or corporations, who may become parties to the indenture of June 9, A. D. 1854, shall fill the streets or avenues enumerated in said indenture of June 9, A. D. 1854, or laid out on the plan accompanying the Third Annual Report of the State Commissioners, dated February 16, A. D. 1855, or upon any plan that may be hereafter adopted by the State Commissioners, in accordance with the indenture, to the level of the Milldam as the same now is, and as much higher, not exceeding three feet (excepting where necessary to cross the railroad), as the State Commissioners, subject to the approval of the Governor and Council, may order: and the State Commissioners, with the President of the Water Power Company for the time being, subject to the approval of the Governor and Council, may order and determine that any street or avenue may be made at a less grade, if they deem such course to be expedient, and the remainder of the territory, not included in the streets, shall be filled to a point within five feet of the level of the Milldam.

Parties to build streets at option; except that they must complete them when the Commonwealth completes its portion.

Second. Neither the Commonwealth nor the Boston Water Power Company, nor any other person or corporation who may become a party to said indenture of June 9, shall be obliged to complete the avenues enumerated in said indenture, or laid out on the plan accompanying the Third Annual Report of the State Commissioners, dated February sixteenth, eighteen hundred and fifty-five, or upon any plan that may be hereafter adopted by the State Commissioners, in accordance with the indenture, until they may severally and respectively deem it expedient so to do; but the Water Power Company and any other person or corporation shall be held to complete any such avenue, in the manner agreed upon, and upon their own land, as soon as the Commonwealth or their assigns shall complete the same upon the territory released to it by said indenture, to the end that such avenue may be opened its entire length at the same time; and the State Commissioners shall notify the other parties when they desire such avenues to be completed. But in no case shall the parties be required to complete the same before the times mentioned in said indentures.

Third. The Commonwealth shall release from the mortgage given by the Boston Water Power Company on the said 9th of June, eighteen hundred and fifty-four, all the territory included in said mortgage, except that part of the same, bounded northerly by land of the Commonwealth, easterly by avenue number one, southerly by avenue G, easterly by avenue B, southerly by avenue numbered three, and westerly by avenue numbered four, containing by estimation two million feet; and the State Treasurer, with the consent of the Commissioners or any persons exercising their powers, and of the Governor and Council, may from time to time release portions of the territory last above mentioned, whenever they may deem it expedient so to do, and upon such terms and conditions as they may approve. And in consideration of the premises and of one dollar to it paid, the Commonwealth doth hereby remise, release, and forever quitclaim to the said Boston Water Power Company all the land and territory included in the said mortgage and not included in the boundaries above mentioned. To have and to hold the same to the said Company, its successors and assigns, forever.

Commonwealth releases certain mortgaged property. 1856, July 11.

Fourth. *Whereas*, the Committee propose to make certain arrangements with the cities of Boston and Roxbury in reference to drainage, the Boston Water Power Company consents and agrees that said cities may use the streets of said Company for such purpose, when graded and opened, upon the same terms and conditions which the Committee may impose upon said cities during the present year relative to the use of the same streets on the territory of the Commonwealth, and also of the avenue numbered two; and if, in making such arrangements, any question shall arise as to the terms to be imposed for a right of drainage by the city of Roxbury through K Street, the same shall be determined by three referees to be appointed, one by the Committee, one by the Boston Water Power Company, and one by the city of Roxbury.

Water Power Company assent to use of its streets for drainage on the same terms as are made by the Commonwealth.

Duly executed.