

THE COMMONWEALTH AND THE BOSTON WATER
POWER COMPANY.

AGREEMENT.

Preamble, relating to the eighty-foot Street next the Public Garden, and avenue "five"; the latter to be widened; and to be divided up into roadway and walks, with trees, &c., houses to set back twenty feet; Water Power Company to fill up portions of the avenue; a railway to be laid for purposes of filling up only.

The Commonwealth agrees to lay out said avenue on its land, with the restrictions named.

The Commonwealth releases certain rights to the channel in the Receiving Basin.

The Water Power Company agrees to lay out its portion of said avenue, and fill up, &c; and impose the restrictions named.

AGREEMENT.¹

This Indenture of two parts, made and concluded this twenty-seventh day of December, in the year of our Lord eighteen hundred fifty-six, 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 said Commonwealth, of the second part, witnesseth:—

Parties.
1856, Dec. 27.

That *whereas*, said Commonwealth and the city of Boston have recently laid out a new street, eighty feet wide, between the "Public Garden," so called, of said city, and land of said Commonwealth, extending from the Milldam, or Beacon Street, to Boylston Street.

Preamble relating to the 80-foot street next the Public Garden, and Avenue Five.

And *whereas*, by an Indenture between said Commonwealth and said Boston Water Power Company, dated June 9,

Company; and by a Committee of the City Council of the city of Boston, viz: Farnham Plummer, Pelham Bonney, Oliver Frost, Ezra Farnsworth, and John G. Webster, the approval of the Mayor being appended.

¹ Recorded with Suffolk Deeds, lib. 719, fol. 36.

1856, Dec. 27. A. D. 1854, and recorded with Suffolk Deeds, lib. 665, fol. 145, an avenue therein called avenue number "five," was laid out one hundred and twenty feet wide, extending over the receiving basin of said company parallel with the Milldam, from avenue number "one," described in said Indenture, to the "cross-dam."

Avenue Five to be widened.

And *whereas*, it is now agreed by and between the parties hereto, that instead of said avenue number "five," a wider and more extended avenue shall be laid out as follows: An avenue beginning on said new street, the point of intersection of the northerly line thereof with the westerly line of said new street, being five hundred fifty-two and a half feet southerly from the Milldam, or Beacon Street, thence extending westerly, of the clear width of two hundred feet, parallel with the Milldam, to the road leading from the westerly end of said Milldam to Roxbury and Brookline, called the "Punch Bowl" road. Said avenue to be filled up to the level of the Milldam.

And to be divided into roadway and walks with trees, &c.

And *whereas*, it is further agreed by and between the parties hereto, that not less than forty-four feet in width from each side of the foregoing described avenue shall be appropriated and used as and for open streets or highways, part to be roadway, and part sidewalk, and to remain forever open and unobstructed; and that the remainder of said avenue, not exceeding one hundred and twelve feet in width, shall be appropriated for a walk, the planting of trees, shrubbery, and grass, and otherwise ornamented, so as to exclude carriages, horses, and other vehicles and animals from the same, excepting where intersected by streets or avenues.

Houses to set back 20 feet.

And *whereas*, it is further agreed by and between the parties hereto, that buildings shall never be erected on the lots belonging to either party bounding on said avenue, any part of which buildings shall be within the distance of twenty feet from the front line of such lots: *provided, however*, that fences may be erected and maintained on the said front line of said lots, and steps and other usual projections from the fronts of said buildings may be made within said distance of twenty feet from said front line.

And *whereas*, it is further agreed by and between the parties hereto, that said Boston Water Power Company shall fill up sixty feet in width of the portion of said avenue situated easterly of the cross-dam, where said Company owns the land adjoining on one side only, and one hundred and twenty feet, where it owns the land adjoining on both sides thereof; said filling to be done on the same terms and conditions as now provided by the several indentures between said Commonwealth and said Company for the filling of said avenue number "five." It being understood that the residue of said portion of said avenue bounded by the land of said Company, and east of the cross-dam, may be filled by either of the parties hereto, or such parties as they may authorize, and neither party is bound to fill the same until they shall deem it expedient so to do.

Water Power Company to fill up portions of the avenue.
1856, Dec. 27.

And *whereas*, it is further agreed by and between the parties hereto, that the said Commonwealth, or the said Water Power Company, may build, or cause to be built, a railroad in said avenue hereinbefore described, over the lands in said avenue belonging to the respective parties, from said "Punch Bowl" road to the easterly boundary of the land belonging to said Commonwealth, for the purpose of bringing in earth and gravel, and materials for filling the lands of said Commonwealth and said Company, and for no other purpose: *provided*, that said railroad shall not be used for such transportation of earth and gravel in said avenue or any other street where the same shall be completed and buildings erected thereon, without the consent of both parties hereto.

A railroad may be laid for purposes of filling up only.

Now, in consideration of the premises, and of the grants, releases, covenants, and agreements in this indenture contained and set forth, the said Commonwealth doth hereby covenant and agree to and with the said Boston Water Power Company and its assigns, that the said Commonwealth will lay out, and it doth hereby lay out so much of said avenue herein described, of the width of two hundred feet, as passes through the land belonging to said Commonwealth; that neither said Commonwealth nor its assigns shall ever erect, or cause to be erected, any building on the lots bordering on said avenue within

Commonwealth agrees to lay out said avenue on its land with the restrictions named.

1856, Dec. 27. twenty feet from the lines thereof on either side; and that said avenue shall be kept open and used for the purposes and in the manner hereinbefore mentioned and described, forever.

Commonwealth releases certain rights to the channel in the receiving basin.

And for the considerations aforesaid, the said Commonwealth doth hereby release, and forever quitclaim and convey to the said Boston Water Power Company, its successors, and assigns, all said Commonwealth's right, title, and interest in and to the channel in the receiving basin, which is situated westerly of the fourth avenue described in said indenture of June 9, 1854, and southeasterly of the Boston and Providence Railroad, reserving the right to lay out streets over the same on the terms and conditions provided by the several indentures between the Commonwealth and said Company for laying out streets in the Back Bay over the lands of said Company; and also, all the right, title, and interest of the said Commonwealth in and to the soil and freehold of the flats and channels in the full basin of said Company, reserving the aforesaid right of said avenue of two hundred feet in width, as herein described and provided.

Water Power Company agrees to lay out its portion of said avenue, and fill up, &c., and impose the restrictions named.

And in consideration of the grants, releases, covenants and agreements in this Indenture contained and set forth, the said Boston Water Power Company doth hereby covenant and agree to and with the said Commonwealth and its assigns, that said Company will lay out, and it doth hereby lay out, so much of said avenue herein described, of the width of two hundred feet, as passes through the land of said Company; that it will fill a portion of the same to the extent and in the manner hereinbefore referred to and set forth; that neither the said Company, nor its successors or assigns, shall ever erect, or cause to be erected, any building on the lots bordering on said avenue within twenty feet of the lines thereof on either side; and that said avenue shall be kept open and used for the purposes and in the manner hereinbefore mentioned and described, forever.

Duly executed.