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REPORT

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OF THE

WATERING COMMITTEE

*Of the Agreements with the Schuylkill Navigation Company
and White and Gillingham, relating to the Water
Power of the river Schuylkill.*

PUBLISHED BY ORDER OF COUNCILS.

PHILADELPHIA:

PRINTED BY W. FRY, WALNUT NEAR FIFTH STREET.

1819.

AGREEMENT.

ARTICLES OF AGREEMENT made, concluded and agreed upon this _____ day of _____ in the year of our Lord one thousand eight hundred and nineteen, between the president, managers and company of the Schuylkill Navigation Company of the one part, and the mayor, aldermen and citizens of Philadelphia of the other part: Whereas Robert Kennedy, of Penn township, in the county of Philadelphia, innkeeper, being seized in fee of and in a certain lot and piece of land and scite for mills, situate on the north-east side of the falls of Schuylkill, in the township of Penn, was by an act of the general assembly of the commonwealth of Pennsylvania, passed on the ninth day of April, one thousand eight hundred and seven, authorized to dig, continue, support and keep in repair a mill race on and contiguous to the said tract of land, to extend a certain distance into the river Schuylkill, and to keep the same in good repair for ever, and to lead off thereby on his own land so much of the water of the said river as should be necessary for a grist and saw mill, or such other machinery as it should by him be found expedient to establish, according to the provisions, limitations and conditions in the said act of general assembly mentioned, as by reference to the same will more fully appear; and whereas the said Robert Kennedy, being so

seized of the said premises and water right, by indenture bearing date the thirty-first day of March, one thousand eight hundred and ten, recorded at Philadelphia in Deed Book I. C. No. 8. page 539, &c. together with his wife, granted and assured the said land and water right to Josiah White, his heirs and assigns, excepting and always reserving out of the said grant the rights and privileges which the said Robert Kennedy in and by a certain indenture bearing date the twenty-first day of April, eighteen hundred and eight, granted unto Samuel Wheeler and others, trustees of the Schuylkill falls bridge.

And whereas by articles of agreement between the president, managers, and company of the Schuylkill Navigation Company, and the said Josiah White, dated the fourteenth day of August, one thousand eight hundred & sixteen, recorded in deed book M. R.No. 12. page 331, &c. the said president, managers, and company, in pursuance of their act of incorporation, passed the eighth day of March, one thousand eight hundred and fifteen, and the supplement thereto, passed the eighth day of February, one thousand eight hundred and sixteen, being fully empowered to improve the navigation of the said river at the said falls and elsewhere, by erecting dams and locks and digging canals, and making other improvements that might be requisite, and to sell water power, and make all necessary contracts for those and other purposes, as in the said acts are particularly mentioned and set forth, did grant to the said Josiah White, his heirs and assigns, the right to erect a dam consisting of several parts as there defined, across the said river, at the falls of Schuylkill aforesaid, and down along or near the west-

ern shore of the said river between the canal then made and the river; and the said Josiah White, his heirs and assigns, were thereby invested for ever with and entitled to all the rights of water power at the said improvement of the said falls, which the said company was entitled to grant under the act of assembly and supplement aforesaid, provided that it be so drawn off, used and employed, that it should not at any time impede, interrupt, or injure the navigation of the said river or canal, and under such conditions, terms and stipulations as in the said recited agreement are more fully expressed and mentioned.

And whereas the said Josiah White and wife, by indenture dated the first day of January, in the year of our Lord one thousand eight hundred and seventeen, recorded at Philadelphia in deed book M. B. No. 19, page 502, &c. granted, conveyed and assigned to Joseph Gillingham, his heirs and assigns, together with the lands and premises in the said indenture mentioned, one sixteenth part of the whole of the water of the said river without any deduction, with liberty to draw the same through the canal or race cut through the long rock at the said falls for the nail factory therein conveyed, or any other water works which he the said Joseph Gillingham, his heirs and assigns, might erect on the said premises, with the privileges and restrictions therein mentioned; and also one full equal undivided moiety or half part of and in the right of water power of the said falls of Schuylkill, and generally of and in all the water of the said river Schuylkill at the said falls, excepting three sixteenths of the said water attached as therein described to the wire factory and lot of the said Josiah White, and one sixteenth attached

and willing to give effect to the same so far as may be done under their Charter of Incorporation, and having at the same time respect to the navigation of the said river, which by the erection of such works may be improved and extended, have agreed with the said mayor, aldermen and citizens of Philadelphia to allow of such improvements under the conditions, stipulations and agreements herein after mentioned:

Now these Presents Witness, that in order to fulfil the intention and meaning of said parties, and also the acts of assembly before mentioned, the said parties have contracted and agreed mutually with each other with respect to the improvements to be made by the said mayor, aldermen and citizens of Philadelphia, and their successors, at or near to Fair Mount, Penn township, Philadelphia county, as follows to wit: They the said president, managers and company of the Schuylkill Navigation Company, grant to the said mayor, aldermen and citizens of Philadelphia, the right, and they the said mayor, aldermen and citizens of Philadelphia, agree to erect a dam as herein after directed across the said river near to Fair Mount, at or nearly opposite to Hunter Street, as laid down in the town plot of Morrisville; the said dam to be built conformably to the charter of incorporation of the said Navigation Company and the supplement thereto, and to be so formed as to be level on the top from one abutment to the other, and so constructed as to raise the water of the said river as high as the said Josiah White might of right do under the said recited articles of agreement between the said Navigation Company and the said Josiah White.

It is hereby mutually understood and agreed between the said parties, that the said president, managers and

company of the Schuylkill Navigation Company shall and may at all times draw off from the said dam as much water as they may deem necessary for the purpose of the navigation, and that the said mayor, aldermen and citizens shall and may enjoy all the remainder of the water of the said river for the purposes herein after mentioned; Provided they do not at any time reduce the same or keep the same reduced below the level of the surface or top of the said dam; it being the design and meaning of the parties, that the said mayor, aldermen and citizens shall only have such use of the water as with the use thereof by the said president, managers and company will not reduce it below the said surface or top of the dam or keep it so reduced. And the said dam is to be kept up and in good and sufficient repair at all times and for ever by the said mayor, aldermen and citizens of Philadelphia and their successors at their own proper expense and charges.

And it is further agreed between the said parties, that a tail race or canal, to accommodate the navigation of the said river at the said dam, is to be completed and finished in good order by the said mayor, aldermen and citizens of Philadelphia and their successors, and as soon as finished delivered and secured to the said Navigation Company and their successors for ever.

And the said mayor, aldermen and citizens of Philadelphia, and their successors, shall build one good and sufficient guard lock, and two chamber locks, each to be eighty feet long and seventeen feet wide, as required by the act of incorporation of the said Navigation Company; the said locks to be so deep as to admit the water of the said river at the lowest time of the said water to the depth of three feet on the ribbond of

the gateways of the said lock or locks, so as to make a safe and convenient passage for boats and other things which may pass through them: and it is further agreed that the locks so to be built, shall be well founded and faced with hewn or well dressed stone, coming into contact with each other no where less than six inches, and running into the body of the wall so as to be perfectly secure; and that the walls of said locks shall average at least seven feet in thickness, and of a height sufficient for the purposes of the said locks; and the abutments and walls of the guard locks are to be so constructed as to be at least seven feet in height above the said dam, and all the materials of which the said locks shall be formed, those of wood as well as of stone, shall be of the best quality and kind, the stones of the walls to be well cemented together. And it is hereby agreed that the tail race or canal, extending from the said locks to the main channel of the said river, shall be formed and completed on a safe and convenient route, to be approved of by the said Navigation Company; and the said tail race or canal shall be thirty feet wide at the bottom at the least, and three feet in depth below the low water of the said river, so that boats may at all times safely pass the same. And the said parties hereby further agree, that the said Navigation Company shall have the right, by themselves or their agents, to inspect the building of the said locks and other works as they shall progress, which said locks and canal shall be completed to the full satisfaction of the said Navigation Company.

And the said parties hereby further agree, that in case the said mayor, aldermen and citizens of Philadelphia, shall determine on placing the said canal and

locks on the east side of the said river, that they shall make for and secure to the said Navigation Company, on such route as the said Navigation Company shall approve, a separate canal from the said dam to enter the river Schuylkill below the water wheels of the city corporation; not less than thirty feet wide at the bottom, which shall in its whole length and breadth be at least three feet below the level of the top of the dam; and the said canal shall be provided with a good and sufficient guard lock at the entrance thereof: and the locks of the said canal shall be placed so far within the banks, as at all times to secure a safe and convenient entrance into and outlet therefrom. And the said mayor, aldermen and citizens of Philadelphia, shall build a good and substantial guard wall between the walls of the said locks and the tail race of the water wheels or mill power, and of a sufficient extent into the river, so that boats may lay with safety at the entrance of the said locks; and all boats which shall or may pass the said guard lock, but not through the two lower locks, shall pay to the said Navigation Company as much toll as they may now legally demand from boats passing one lock (except such boats as may be employed by the said mayor, aldermen and citizens of Philadelphia, for the purposes of the said city, which shall not pay any toll.)

And it is further agreed between the said parties, that in case the said mayor, aldermen and citizens of Philadelphia, and their successors, shall at any time hereafter make and construct a canal along or near to the route of the present canal at Morrisville, to communicate with the Schuylkill to the northward of Fair Mount; or in case any other persons, bodies politic or

corporate, shall make and construct such canal, then and in such case the said Navigation Company shall not demand or require the tolls on such canal and locks, or any part of them, to be paid to them, and such tolls shall and may be receivable by those entitled to them. But in case the said mayor, aldermen and citizens of Philadelphia, shall make a canal running between Quarry-hill at Fair Mount and the river Schuylkill, they shall be at liberty to demand and receive all the tolls receivable on the said canal, except so much thereof as may be equal to the tolls which the said Navigation Company now may legally take at any one of their locks, which said toll shall be paid to the said Navigation Company, except on boats employed on the said canal for the use of the said mayor, aldermen and citizens of Philadelphia, which shall not pay any toll. But it is expressly agreed, that nothing herein contained shall in any manner be understood to authorise any interference with the canal and locks herein and hereby stipulated to be constructed and delivered to the said president, managers and company, nor to impair or lessen the obligation of the said mayor, aldermen and citizens to maintain, support and keep the said dam in repair, nor to affect or impair the exclusive authority and control over the said canal and locks, and the exclusive possession and ownership thereof, by the said president, managers and company.

And the said parties hereby further covenant and agree, that the said mayor, aldermen, and citizens of Philadelphia, and their successors, shall not sell, lease, or dispose of any water power of the said river Schuylkill, nor use the said water power for manufacturing purposes, except only for boring pipes, pumps, and

such other matters and things, as may be useful to and connected with the said public works of the said mayor, aldermen, and citizens of Philadelphia.

And whereas, the said mayor, aldermen, and citizens of Philadelphia, having become possessed of the whole of the water power at the falls of the said river, by the before recited conveyance, from the said Josiah White and Joseph Gillingham, it is covenanted and agreed by and between the parties hereto, that the provisions of the agreement of the 14th day of August, 1816, between the said Navigation Company, and the said Josiah White, imposing particular conditions and restrictions on the said Josiah White, and his assigns, in reference to the dam, locks, and canals, at the said falls, shall cease and become void, so far as the said conditions and restrictions may be rendered unnecessary, by the construction of a dam, together with canals and locks, at or near to Fair Mount; and the said mayor, aldermen, and citizens of Philadelphia, at any time after the said dam, abutments, guard walls, canals, and locks, at or near Fair Mount, are completed to the satisfaction of the said president, managers, and company of the Schuylkill Navigation Company, take up and remove the present materials of the locks, dams, gates, &c. at the said falls, except the guard wall, and apply the same to such uses as they may see proper, freed from any claims of the said Navigation Company. And it is hereby declared to be understood and agreed between the said parties, that nothing in this agreement contained is in any manner to impair or affect the rights belonging to the said mayor, aldermen, and citizens of Philadelphia under the said act of Assembly, of the 9th day of April, 1807, reserved to them therein, or those since

by them acquired under the before mentioned conveyance, from the said Josiah White and Joseph Gillingham; but the same are to be held by them as fully and to all intents and purposes as heretofore, except so far as they may be altered, changed or modified by this present agreement.

And the said mayor, aldermen, and citizens of Philadelphia, for themselves and their successors, do hereby covenant, promise and agree to pay all penalties and damages, which the said Schuylkill Navigation Company would or might be liable to pay, so far as said penalties or damages may be occasioned by the said dam, canal, and locks, or other works to be erected at or near Fair Mount, and all damages occasioned by Josiah White's dam at the falls, to which he would be liable by virtue of the said articles of agreement, and to pay all expenses attending suits which may be brought against the said Schuylkill Navigation Company, by reason of either of the said dams, canals, and locks. All the works to be completely finished as soon as practicable, but on or before the 1st day of January, 1822, unavoidable accidents excepted. The said mayor, aldermen, and citizens covenant and agree that they will provide and furnish the said president, managers, and company of the Schuylkill Navigation Company, sufficient and suitable ground adjoining the said locks, whereon to erect a convenient toll house, with free access to and from the same from time to time and at all times hereafter for ever. The locks and canals when finished, and ground for the toll-house, to be delivered over and put in possession of the said Schuylkill Navigation Company, and to be and remain their property for ever.

And the said mayor, aldermen, and citizens of Philadelphia, and their successors, do hereby covenant, promise and agree to and with the said president, managers and company of the Schuylkill Navigation Company, that they the said mayor, aldermen and citizens of Philadelphia and their successors, shall and will well and truly do and perform all and singular the covenants, matters and things on their part to be done and performed: and the said president, managers and company of the Schuylkill Navigation Company, do hereby covenant, promise and agree to and with the said mayor, aldermen and citizens of Philadelphia, that they and their successors shall and will well and truly do and perform all and singular the covenants, matters and things on their part to be done and performed; and that the said mayor, aldermen and citizens of Philadelphia doing and performing at their own expense all and singular the matters and things on their part to be done and performed, shall and may enjoy all the rights, privileges, estate and interest hereby granted and conveyed or intended so to be, without any let or molestation of the said president, managers and company of the Schuylkill Navigation Company and their successors, or any claiming under them. And for the true and faithful performance of all and singular the covenants, articles, and agreements aforesaid, the said parties bind themselves to each other firmly by these presents.

IN WITNESS whereof the said president, managers and company of the Schuylkill Navigation Company, and the said mayor, aldermen and citizens of Philadelphia, have hereunto caused their common or public seal to be interchangeably affixed.

said act of General Assembly mentioned, as by reference to the same will more fully appear:

And whereas the said Robert Kennedy, being so seized of the said premises and water right, by indenture bearing date the thirty first day of March, in the year of our Lord one thousand eight hundred and ten, recorded at Philadelphia in deed book I. C. No. 8, page 539, &c. together with his wife, granted and assured the said land and water right to the said Josiah White, his heirs and assigns, excepting and always reserving out of the said grant the rights and privileges which the said Robert Kennedy, in and by a certain indenture bearing date the 21st day of April, 1808, granted unto Samuel Wheeler and others, trustees of the Schuylkill falls bridge:

And whereas, by articles of agreement between the president, managers and company of the Schuylkill Navigation Company and the said Josiah White, dated the fourteenth day of August, in the year of our Lord one thousand eight hundred and sixteen, recorded at Philadelphia in deed book M. R. No. 12, page 331, &c. the president, managers and company of the Schuylkill Navigation Company, in pursuance of their act of incorporation, passed the eighth day of March, one thousand eight hundred and fifteen, and the supplement thereto, passed the day of one thousand eight hundred and sixteen, being fully empowered to improve the navigation of the said river at the said falls and elsewhere, by erecting dams and locks and digging canals and making other improvements that might be requisite, and to sell water power and make all necessary contracts for those and other purposes, as in the said acts are particularly mentioned

and set forth; did grant to the said Josiah White, his heirs and assigns, the right to erect a dam consisting of several parts as therein defined across the said river at the falls of Schuylkill aforesaid, and down along or near the western shore of the said river between the canal then made and the river; and the said Josiah White, his heirs and assigns, were thereby invested forever with and entitled to all the rights of water power at the said improvement of the said falls which the said company were entitled to grant under the act of Assembly and supplement aforesaid, provided that it be so done, drawn off, used and employed that it should not at any time impede, interrupt or injure the navigation of the said river or canal, and under such conditions, terms and stipulations as in the said recited agreement are more fully expressed and mentioned:

And whereas the said Josiah White and wife, by indenture dated the first day of January, one thousand eight hundred and seventeen, recorded at Philadelphia in deed book M. B. No. 19, page 502, &c. granted, conveyed and assured unto the said Joseph Gillingham, his heirs and assigns, together with the lands and premises in the said indenture mentioned, one sixteenth part of the whole of the water of the said river without any deduction, with liberty to draw the same through the canal or race cut through the long or main rock at the said falls for the nail factory therein conveyed, or any other water works which he the said Joseph Gillingham, his heirs and assigns, might erect on the said premises, with the privileges and restrictions therein mentioned; and also one full equal and undivided moiety or half part of and in the right of water power of the said Falls of Schuylkill, and generally of and in

all the water of the River Schuylkill at the said Falls, excepting the six-tenths of the said water attached as therein described to the wire factory and lot of the said Josiah White, and one-sixteenth attached as aforesaid to the said nail factory and lot; and all the rights, privileges and advantages given and granted in and by the said recited agreement with the Navigation Company to the said Josiah White, his heirs and assigns, under and subject to all the restrictions, conditions, stipulations and agreements therein mentioned.

And whereas in and by certain articles of agreement made and entered into between them the said Josiah White and Joseph Gillingham, and Joseph S. Lewis, Samuel Williams and Joseph Watson, on behalf of the Watering Committee of the Select and Common Councils of the City of Philadelphia, the said Josiah White and Joseph Gillingham agreed to sell and convey for the consideration money therein mentioned to the mayor, aldermen and citizens of Philadelphia, their successors and assigns, the entire and exclusive power of the use of the water of the River Schuylkill, freed from all persons claiming under them, and reserving in such sale the fast-lands then owned by them on both sides of the river and the right of removing the buildings thereon, and giving to the mayor, aldermen and citizens of Philadelphia, their successors and assigns, full power to place a dam below the falls at any time they should think proper, and thereby stop the works at the falls as soon as they should see fit; and the mayor, aldermen and citizens of Philadelphia agreed to indemnify the said Josiah White and Joseph Gillingham against the claims of the said Navigation Company for the further improvement and passage at the locks at

the falls, stipulated for in the agreement of the said Josiah White with the said Navigation Company; and in case any damage should happen by overflowing up to the limits granted by the said Navigation Company to the said Josiah White, the same to be paid by the mayor, aldermen and citizens of Philadelphia; and in case that the mayor, aldermen and citizens of Philadelphia should decide to use the water power at the falls,

the said Josiah White and Joseph Gillingham further agreed to convey to them any ground below the falls bridge on the east side of the river which they may think useful to it belonging at the time of the said agreement to the said Josiah White and Joseph Gillingham, free of cost, possession whereof to be given in one year, together with the liberty to use any part of the present materials of the locks, dams, gates, &c. except the guard wall, which the said mayor, aldermen and citizens of Philadelphia may think proper.

Now this Indenture witnesseth, that the said Josiah White and Elizabeth his wife, and Joseph Gillingham, and Rebecca his wife, for and in consideration of the sum of one hundred and fifty thousand dollars, lawful money of the United States to them in hand well and truly paid, by the mayor, aldermen, and citizens of Philadelphia, at or before the sealing and delivery hereof, the receipt whereof the said Josiah White and Joseph Gillingham do hereby acknowledge, Have granted, bargained, sole, aliened, enfeoffed, and confirmed, and by these presents Do grant, bargain, sell, alien, enfeoff, and confirm unto the mayor, aldermen, and citizens of Philadelphia, their successors and assigns, all their right of water power of the falls of the river Schuylkill, and generally of and in all the water of the said

river at the said falls, and all the rights, privileges and advantages given and granted in and by the above recited articles of agreement between the president, managers and company of the Schuylkill Navigation Company and the said Josiah White, and the said indenture of the said Robert Kennedy, and the said acts of assembly, together with all the rights, incidents, members and appurtenances whatsoever thereunto belonging or in any wise appertaining, which they the said Josiah White and Joseph Gillingham hold jointly or severally or otherwise howsoever, and also all the present materials of the locks, dams, gates, canal walls, except the guard wall, TO HAVE AND TO HOLD the said right of water power of the falls of the said river, hereditaments and premises hereby granted or mentioned or intended so to be, with the appurtenances, unto the mayor, aldermen and citizens of Philadelphia, their successors and assigns, to the only proper use and behoof of the mayor, aldermen, and citizens of Philadelphia, their successors and assigns, forever. And the said Josiah White and Joseph Gillingham for themselves, their heirs, executors and administrators, and for every of them, do jointly and severally covenant, promise and agree to and with the mayor, aldermen, and citizens of Philadelphia, their successors and assigns, by these presents in manner following, that is to say, that the mayor, aldermen and citizens of Philadelphia may erect a dam below the falls of the said river at any time they see proper, and should they decide to use the water at the said falls, then to convey and assure to the mayor, aldermen and citizens of Philadelphia, their successors and assigns, all the ground now held by the said Josiah White and Joseph Gillingham or

either of them, below the bridge at the said falls on the east side of the said river, which they the mayor, aldermen and citizens of Philadelphia, their successors and assigns, may think useful to them, and to deliver up possession thereof within one year from the date hereof free and clear from all costs and charges or further consideration money; and also to indemnify and save harmless the mayor, aldermen and citizens of Philadelphia, their successors and assigns, from all costs and damages, claims and demands, for or by reason of any person or persons holding or claiming rights or privileges under the said Josiah White and Joseph Gillingham, or under either of them, at the said falls, for or by reason of any improvements which may be made in or upon the said river by the mayor, aldermen, and citizens of Philadelphia, their successors and assigns, for or by reason of the water power and privileges hereby granted, or others which may be granted, to the mayor, aldermen, and citizens of Philadelphia.

And the mayor, aldermen and citizens of Philadelphia, for themselves, their successors and assigns, do covenant, promise and agree to and with the said Josiah White and Joseph Gillingham, their heirs and assigns, by these presents, in the manner following that is to say, that they the mayor, aldermen and citizens of Philadelphia, their successors and assigns, shall and will do and perform all and every the covenants and agreements to be done and performed by the said Josiah White in the said recited agreement with the said Schuylkill Navigation Company mentioned or contained; and also to indemnify and save harmless the said Josiah White and Joseph Gillingham, and their heirs, of and from all claims of the president, managers and company of the Schuylkill

Navigation Company, for the further improvement and passage of the locks at the falls of the said river, and of and from all other costs and charges, claims and demands whatsoever for or by reason of any the covenants, or engagements made and entered into by the said Josiah White to and with the said Navigation Company, for or by reason of any improvements which may be made by the mayor, aldermen and citizens of Philadelphia, their successors and assigns, at the falls of the said river or elsewhere on the same; and also that they the said Josiah White and Joseph Gillingham, shall and may have liberty to remove and take away their present buildings at the said falls, and make use of the water power at the same for a term not exceeding eighteen months, unless the mayor, aldermen and citizens of Philadelphia shall decide to use the said water power at the said falls, or to erect a dam at or near to Fair Mount within the said time.

And it is hereby declared to be understood and agreed between the said parties, that nothing in this indenture contained is in any manner to impair or affect the rights belonging to the said mayor, aldermen and citizens of Philadelphia under the said act of Assembly of the 9th day of April, 1807, reserved to them therein, but the same are to be held by them as fully and to all intents and purposes as heretofore. And the said Josiah White and Joseph Gillingham for themselves, their heirs, executors and administrators, do covenant, promise and agree to and with the mayor, aldermen and citizens of Philadelphia, their successors and assigns, by these presents, that they the said Josiah White and Joseph Gillingham, and their heirs, all and singular the premises hereby granted with the appurtenances, unto

the mayor, aldermen and citizens of Philadelphia, their successors and assigns, against them the said Josiah White and Joseph Gillingham, and their heirs, and against all and every other person or persons whomsoever lawfully claiming or to claim the same by from or under them or either of them, shall and will warrant and forever defend by these presents.

In witness whereof the said Josiah White and Elizabeth his wife and Joseph Gillingham and Rebecca his wife, have hereunto set their hands and seals, and the mayor, aldermen and citizens of Philadelphia have caused their corporate seal to be affixed, the day and year first above written.

Sealed and delivered }
in the presence of }