

ARTICLES OF AGREEMENT

2 Made and entered into this day of March, 1879, by and
3 between the Sutro Tunnel Company, party of the first part, and the Mexican Gold
4 and Silver Mining Company, party of the second part, each of said companies being
5 duly incorporated under the laws of the State of California, and having its works in
6 the State of Nevada:

7 WHEREAS, an agreement, dated the 26th day of March, 1866, was entered into
8 by and between the Trustees for the Sutro Tunnel Company, acting in its behalf,
9 an association then existing under the laws of the State of Nevada, it being the pre-
10 decessor in interest of the now-existing corporation, the Sutro Tunnel Company, party
11 of the first part, and the Gould & Curry Silver Mining Company, then a corporation
12 as aforesaid, party of the second part, which agreement is in the words and figures
13 following, to wit:

14 "ARTICLES OF AGREEMENT, made and entered into this 26th day of March, A. D. one
15 thousand eight hundred and sixty-six, by and between WILLIAM M. STEWART, D. E. AVERY,
16 LOUIS JANIN, JR., H. K. MITCHELL, and A. SUTRO, Trustees for the SUTRO TUNNEL COMPANY,
17 parties of the first part, and the GOULD & CURRY SILVER MINING COMPANY, a corporation doing
18 business in the County of Storey, State of Nevada, party of the second part.

19 WHEREAS, by an Act of the Legislature of the State of Nevada, entitled "*An Act grant-*
20 *ing the right of way, and authorizing A. Sutro and his associates to construct a Mining and Drain-*
21 *ing Tunnel,*" approved February 4th, 1865, the Legislature of said State granted to the said
22 A. Sutro and his associates, his and their successors and assigns, for the period of fifty years
23 from and after the approval of said act, the exclusive privilege of the right of way, and the
24 exclusive privilege to run, construct, and excavate a tunnel, running into the Comstock Lode,
25 from any point in the foothills of the Carson River Valley, within the boundaries of the
26 County of Lyon, and between Webber Cañon and Corral Cañon; and also granted other
27 rights and privileges, which fully appear in said act;

28 And whereas, the said A. Sutro, and the above named William M. Stewart, D. E. Avery,
29 Louis Janin, Jr., and Henry K. Mitchell, have associated themselves together, under the
30 name and style of "The Sutro Tunnel Company," for the purpose of running and completing
31 said tunnel in accordance with the terms and conditions of said legislative enactment;

32 And whereas, all corporations, associations, companies, and individuals owning or inter-
33 ested in the said Comstock Lode are beneficially interested, by the drainage of their respective
34 mines on the Comstock Lode, in the speedy completion of the said tunnel;

35 And whereas, the party of the second part is the owner of, in possession of, and working
36 upon that certain portion of the said Comstock lode in the City of Virginia, county and State
37 aforesaid, known as the Gould & Curry Silver Mining Company's Mine; and as such owner is
38 beneficially interested in the early completion of said tunnel, for the purposes of drainage
39 aforesaid, and other conveniences thereby to be afforded: Now, therefore, these articles
40 witness:

41 ARTICLE FIRST. The parties of the first part, in consideration of the premises, and in
42 consideration of the covenants and agreements hereinafter mentioned, to be kept and per-
43 formed by the party of the second part, covenant and agree to and with the party of the
44 second part, that the parties of the first part will, on or before the first day of August, 1867,
45 commence, and with reasonable energy and vigor, and at their own expense, run, excavate,
46 and complete the tunnel and lateral drifts hereinafter mentioned, and put the same in con-
47 dition for use, in accordance with the provisions of the said act of the Legislature of the
48 State of Nevada, and with the covenants in this agreement contained, for the purpose of
49 draining the mines on the said Comstock lode and furnishing other conveniences for working
50 the same.

51 ARTICLE SECOND. The said tunnel shall commence at some point in the foothills of Car-
52 son Valley, between Corral Cañon and Webber Cañon, within the county of Lyon, and shall

1 extend to, and cut, and pass through the said Comstock lode to its western wall, at some
2 point between the north line of the claim of the Ophir Silver Mining Company, and the
3 south line of the claim of the Yellow Jacket Company, and at a depth of not less than one
4 thousand eight hundred feet below the top of what is known as the Gould and Curry crop-
5 pings.

6 ARTICLE THIRD. The parties of the first part covenant and agree that the work shall
7 be commenced at the time specified, by running the tunnel from the foothills of Carson Val-
8 ley; and also by simultaneously sinking at least three shafts of sufficient capacity on the line
9 of the tunnel, and when the shafts have reached the depth required for the level of the
10 tunnel, then to drift in both directions from the bottom of each shaft, so that there shall be at
11 least seven places of excavation going on, from the time that all of the shafts shall reach the
12 requisite level, all the time until the tunnel is completed, unless connections between some of
13 the shafts are sooner made; and the said work at all times shall be prosecuted continuously
14 and without any interruption, except from unavoidable accident, until the completion of the
15 tunnel, and of the works which, under this agreement, are to be considered as draining the
16 mine of the party of the second part; and in case of any such interruption occurring, the
17 cause thereof shall be removed or remedied and the work resumed without delay.

18 And the parties of the first part covenant and agree that, on or before the said first day
19 of August, 1867, there shall have been subscribed, in good faith and by apparently responsible
20 persons, at least the sum of three millions of dollars, for the purpose of carrying on and com-
21 pleting the said tunnel and the lateral drifts hereinafter mentioned; that of said sum at least
22 ten per cent. shall have been actually paid in cash; that during the first year in which the
23 work shall be prosecuted, commencing on said first day of August, 1867, there shall be
24 expended upon, or on account of the work, not less than the sum of four hundred thousand
25 dollars, and during each succeeding year thereafter, until the work shall be completed, so as to
26 drain the mine of the party of the second part within the meaning of this agreement, not less
27 than the sum of two hundred thousand dollars; provided that this amount can be advan-
28 tageously expended after the completion of the main tunnel; and that they, the parties of the
29 first part, will, within thirty days after the expiration of each year, furnish to the party of the
30 second part a full, true, and correct statement of the expenditures made on account of the
31 work during such year, verified by the oath of the managing agent and secretary or book-
32 keeper of the parties of the first part.

33 ARTICLE FOURTH. If the work shall not be commenced on or before said day, and with
34 said sum of three millions of dollars subscribed, and ten per cent. thereof actually paid in
35 cash, as hereinbefore provided, or if, after so commencing, the parties of the first part shall
36 during any year fail to expend on account of the work the sum of money hereinbefore agreed
37 to be expended during such year, this agreement shall, at the option of the party of the
38 second part, cease and determine, and thereafter be of no effect. And if, after the work shall
39 have been commenced, it shall not be continuously prosecuted, as hereinbefore agreed, the
40 party of the second part, in conjunction with other companies or corporations with which the
41 parties of the first part may have entered into similar agreements, and which may desire to
42 unite with the party of the second part in so doing, shall have the right to enter and take
43 possession, and complete the work, or have it completed under contracts, at the expense of
44 the parties of the first part, deducting the cost of its completion from the first moneys becoming
45 due to the parties of the first part under this agreement.

46 ARTICLE FIFTH. The parties of the first part further covenant and agree that in the
47 event they shall fail in obtaining subscriptions for the sum of three millions of dollars, or if
48 the sum of three hundred thousand dollars shall not have been actually paid in cash, as here-
49 inbefore agreed, on the said first day of August, 1867, then the said parties of the first part
50 shall and will, if the party of the second part desire it, sell and convey, within six months
51 thereafter, the said franchise granted to A. Sutro by said act of the Legislature of the State
52 of Nevada, of February 4, 1865, and also three hundred and twenty acres of land at and
53 including the mouth of said tunnel, to be selected by the purchasers, in one body, and in a
54 square or rectangular form, and if the latter, the length not to exceed twice the width, to the
55 said parties of the second part, and to the other mining companies which have entered or shall
56 enter into like contracts with the said parties of the first part, and shall join in the purchase,
57 for the sum or price of one hundred thousand dollars, each company paying thereof its *pro*
58 *rata*, according to the number of feet of ground owned by each.

59 ARTICLE SIXTH. The dimensions of said tunnel shall be not less than seven feet in height
60 in the clear, and eight feet in the clear in width. It shall have a grade of not less than one

1 ARTICLE TWELFTH. In consideration of the foregoing covenants and agreements to be
 2 kept and performed by the parties of the first part, and for valuable considerations from the
 3 parties of the first part moving to the party of the second part, the said second party covenants
 4 and agrees to pay to the parties of the first part two dollars per ton for all ore extracted from
 5 the mine of said second party, after the works of said first parties shall have drained the said
 6 second party's mine so as to render all other means of drainage unnecessary to the lowest level
 7 attained, provided such level is not lower than the level of the tunnel herein provided for.
 8 Also, during the time when said party of the second part shall use said tunnel or drifts as
 9 means of transportation, as hereinbefore contracted for, the party of the second part will pay
 10 to the parties of the first part for each ton of ore, rock, earth, or debris removed from the
 11 point hereinbefore designated to or beyond the mouth of the tunnel, as the case may be, the
 12 sum of twenty-five cents per mile from the place of removing it to the place of discharging it,
 13 and at the same rate for all material conveyed from the mouth of the tunnel to said point of
 14 connection heretofore described, forty cubic feet of timber or twenty-two hundred and forty
 15 pounds of rock, ore, or other material being considered a ton, and will also pay the said par-
 16 ties of the first part the sum of twenty-five cents each way for each man conveyed to and from
 17 the said point at the request of or on account of the said second party; all laborers, employees,
 18 agents, and other persons connected with the said corporation of the second part to be included
 19 and paid for as above stated. And if at any time the mining works of the party of the second
 20 part shall reach a level lower than the level of the tunnel aforesaid, the party of the second
 21 part shall be permitted, by means of pumps or otherwise, to raise water from such lower level
 22 to the level of said tunnel or lateral drift, and the water so raised shall be discharged by
 23 means of the tunnel, as if the same were struck on or above such level. *Provided, That the*
 24 *party of the second part shall only pay to the parties of the first part the said sum of two dol-*
 25 *lars per ton on the ore extracted which said second party shall have reduced at some mill or*
 26 *other reduction works or shall have sold; and provided further, That no such payment shall be*
 27 *due or made until the works of the parties of the first part shall have either actually drained*
 28 *said mine, so as to obviate the necessity for all other modes of drainage, or shall be prose-*
 29 *cuted to the extent in the next article mentioned, which shall be deemed and considered*
 30 *sufficient drainage within the meaning of this agreement; and provided further, That said*
 31 *sum of two dollars per ton shall only be due and payable during such time or times as the*
 32 *said works shall actually drain said mine as aforesaid, or shall be in good condition to the*
 33 *extent in the next article mentioned; and no sum of money shall be due or payable to the*
 34 *parties of the first part, on account of ores extracted, during any time or times when the said*
 35 *second party's mine is not drained by reason of any obstruction or defect in the tunnel or*
 36 *drifts of the said first parties.*

37 ARTICLE THIRTEENTH. It is mutually agreed that the true intent and meaning of these
 38 articles, as to the draining of the mine of the party of the second part, are, that whenever
 39 the said mine is actually drained by the works of the said first parties, so as to render all
 40 other means of drainage useless, to the lowest level attained by the works of the said party of
 41 the second part, but not lower than the level of the tunnel, the same shall be deemed a full
 42 compliance with the covenant of the parties of the first part for the drainage thereof; and
 43 whether said mine be actually so drained or not, it shall be deemed and considered drained
 44 within the meaning of this agreement, in either of the following events:

45 If the main tunnel shall intersect the Comstock lode, and cut the eastern wall thereof,
 46 between the north and south boundaries of the mine of the said second party, the mine shall
 47 be considered drained.

48 Or it shall be considered drained if the main tunnel shall cut said eastern wall outside of
 49 those lines, and the parties of the first part shall extend the lateral drift hereinbefore cove-
 50 nanted to be extended within said Comstock vein, to a point equidistant from such north and
 51 south boundaries.

52 Or it shall be considered drained upon the expiration of three months after the
 53 parties of the first part shall have extended said drift outside of said lode, but within five
 54 hundred feet east of the west wall thereof, to a point not more than five hundred feet east of
 55 said west wall, whence a drift at right angles would enter said lode at a point equidistant from
 56 the northern and southern boundaries of the claim of the second party.

57 ARTICLE FOURTEENTH. The party of the second part, after the completion of the works
 58 aforesaid, according to the meaning and intent of the preceding article, agrees and binds itself
 59 to furnish to the parties of the first part, on the fifth day of each and every month, (unless
 60 that day be Sunday, and in that event on the sixth day) a full, fair and just account of each

1 ton of ore extracted from its mine and reduced at some mill or other reduction works, or sold
 2 for such reduction during the month preceding, or which may have been sent by the party of
 3 the second part to such mill or other reduction works to be reduced; and on the day of ren-
 4 dering such account, or within three days thereafter, shall pay to the parties of the first part
 5 the said sum of two dollars for each ton of ore so extracted, and on the same day shall pay
 6 such other sum as may be due for the transportation or conveyance of the workmen, or other
 7 persons, and of ores, rock, debris, timber, and other material, to or from said mine; *Provided*,
 8 that if, during the month preceding, the mine of the party of the second part shall not have
 9 been drained, by reason of any defect or obstruction in the works of said parties of the first
 10 part, the said sum of two dollars per ton on account of ores so extracted during the time such
 11 obstruction existed shall not be due or payable, but only the sums due for other causes shall
 12 be due and payable at such time.

13 ARTICLE FIFTEENTH. If any question should arise between the parties to this agreement,
 14 either in respect to the time when the mine of the party of the second part shall have been
 15 drained in accordance with the foregoing articles, and the payment of two dollars per ton for
 16 ore extracted should commence, or in respect to the amount of money at any time due or pay-
 17 able from the party of the second part to the parties of the first part, it is agreed that such
 18 question shall be determined by each party choosing one competent and disinterested person
 19 as an arbitrator; and in the event of disagreement between such arbitrators they shall choose
 20 a third competent and disinterested person; the arbitrators shall be sworn, and a majority of
 21 the three may decide the disagreement between the parties hereto, and their decision shall
 22 be final. For the purpose of deciding such issue, the arbitrators, in the presence of each
 23 party, or upon reasonable notice thereof in writing, may receive evidence of witnesses or other
 24 proofs; and either party, in the presence of the other, or upon reasonable notice in writing,
 25 may produce evidence before the arbitrators so chosen. The decision of the arbitrators shall
 26 in every case be made in writing, and it shall be binding and effectual from the time that a
 27 copy thereof, certified by the arbitrators, or a majority of them, shall have been delivered to
 28 both parties.

29 ARTICLE SIXTEENTH. If the parties of the first part shall at any time enter into any
 30 agreement with any other person, company, or corporation holding a mine upon the Comstock
 31 lode, in respect to drainage, transportation, or other advantage derived from the works of the
 32 parties of the first part, upon terms more favorable to such person, company, or corporation
 33 than those herein contained, the party of the second part shall be entitled, at its option,
 34 to all the benefits thereof as fully and to the same extent as if they were herein set forth and
 35 made part of this agreement.

36 ARTICLE SEVENTEENTH. Each and every of the articles of this agreement shall be bind-
 37 ing and of full force against each party hereto, and upon the assigns and successors thereof;
 38 and said assigns or successors shall be entitled to all the benefits and privileges thereof, as if
 39 the same were in each article distinctly set forth. And it is agreed that if the said corpora-
 40 tion, party of the second part, should in any manner be dissolved, or if it should convey the
 41 said mine, the grantees and successors of said corporation shall take the said mine subject to
 42 the conditions and obligations of this agreement, which it is agreed shall constitute and be a
 43 lien in law and equity on said mine for the faithful carrying out of the covenants herein con-
 44 tained.

45 ARTICLE EIGHTEENTH. It is agreed that all payments provided in this agreement to be
 46 made by the party of the second part to the parties of the first part shall be made in gold
 47 coin, and not otherwise."

48 AND WHEREAS, the party of the second part, and other companies mining on
 49 the Comstock Lode, are beneficially interested in the speedy construction of a lateral
 50 tunnel along said lode, which it is contemplated shall have the following general
 51 direction, viz.: Commencing, for the North Lateral Tunnel, at a point in the Sutro
 52 Tunnel between points nineteen thousand (19,000) and nineteen thousand five
 53 hundred (19,500) feet from its entrance, and running thence northerly to a point
 54 about one hundred (100) feet west of the C. & C. Shaft, and thence northerly to a
 55 point about one hundred (100) feet east of the Sierra Nevada Shaft, and thence
 56 northerly to a point about five hundred (500) feet east of the Utah Shaft; and com-
 57 mencing, for the South Lateral Tunnel, at the Julia Shaft, which is already connected
 58 with the main tunnel of said first party, and running thence southerly to a point about

1 eighty (80) feet east of the new Yellow Jacket Shaft, thence southerly to a point
2 about two hundred (200) feet west of the new Overman or Foreman Shaft;

3 AND WHEREAS, both of the parties hereto are desirous of adjusting all dif-
4 ferences existing between themselves, and of preventing a recurrence thereof in the
5 future,

6 NOW, THEREFORE, THESE ARTICLES WITNESS, that the said agree-
7 ment, dated March 26th, 1866, between the said parties thereto for the construction
8 of a tunnel known as the Sutro Tunnel, is hereby made and constituted the agree-
9 ment by and between the parties hereto, and recognized as existing and binding between
10 the parties hereto, subject to the changes and modifications hereinafter contained,
11 which are hereby agreed to and adopted, whether specific reference be herein made
12 to the portions of said agreement hereby changed and modified or not.

13 ARTICLE FIRST.—It is hereby agreed that the provisions in the agreement
14 of March 26th, 1866, which, by the terms of said agreement, were to be performed
15 prior to this date by either party thereto, shall be held and considered as having been
16 performed by said party.

17 ARTICLE SECOND.—The main tunnel and works, from its mouth to the
18 point where it enters the Comstock Lode, at the Savage Mine, as now constructed,
19 are to be deemed between the parties hereto as completed according to the terms of
20 said agreement of March 26th, 1866, and in accordance with all the conditions of said
21 agreement, as to the starting point, direction, time, manner of construction, grade,
22 dimensions, and in every other respect; but the party of the first part agrees to con-
23 struct, within ninety days from the execution of these presents, a proper covered
24 drain or other water conduit, of such character as to fit the tunnel for the reception
25 and carrying off of all water, of whatever temperature, which may be discharged into
26 the same from any or all of the Comstock Mines.

27 ARTICLE THIRD.—It is hereby further agreed by the parties hereto that
28 until the expiration of said ninety days no water shall be discharged by or from the
29 mine of the party of the second part into said tunnel, except by the consent of the
30 party of the first part; but at the end of said period of ninety days, or as soon within
31 said ninety days as the said party of the first part shall, in writing, inform the party
32 of the second part, that it, the said first party, is ready to receive into its tunnel the
33 water from said second party's mine, the said second party shall be at liberty thence-
34 forth to discharge or pump, through pipes or boxes, into said tunnel or its branches,
35 at any point through the sides thereof, all the water of any temperature which may
36 be found in, or may hereafter flow from any source into its mine, including water
37 which may be introduced into said mine for the purpose of creating propelling power,
38 provided, said water has not been used at any mill. And the main and lateral tunnel
39 shall be kept in proper repair for the free flow of water, by the party of the first part, in
40 accordance with the stipulations of this and the agreement of March 26th, 1866.
41 And the said party of the second part further agrees to permit the cold water found
42 or introduced above the said tunnel level to flow or be discharged separately into said
43 tunnel or its branches, wherever practicable, at the request and expense for pipes
44 or boxes of said first party.

45 ARTICLE FOURTH.—The party of the first part agrees to commence within
46 ninety days from the date hereof, and prosecute with due diligence, the construction
47 of a lateral tunnel, having a general northerly direction, commencing at a point in
48 the Sutro Tunnel between points nineteen thousand (19,000) and nineteen thousand
49 five hundred (19,500) feet from its entrance, and running thence northerly to a
50 point one hundred (100) feet or thereabouts, west of the Consolidated Virginia and
51 California joint shaft, known as the C. & C. Shaft, and thence northerly past the
52 mining claim of said second party, towards a point about one hundred (100) feet east of
53 the Sierra Nevada Shaft; the lines between the points designated to be approximately

1 straight lines, except as provided for in Article Fifth of this agreement. And it is
 2 hereby further agreed that the said lateral tunnel shall be considered the lateral drift
 3 provided for in the agreement of March 26th, 1866, which was to be constructed
 4 within five hundred (500) feet east from the west wall of the Comstock Lode. The
 5 said lateral tunnel shall have a width of at least eight (8) feet, and a height of seven
 6 (7) feet in the clear, and be substantially constructed, and thoroughly timbered where
 7 required, and provided with a suitable drain for the flow of water of any temperature
 8 coming into it from the mine of the party of the second part; and it shall have a
 9 grade of not less than one inch nor more than three inches in every one hundred (100)
 10 feet in length. And the said lateral tunnel shall be the property of and be kept in
 11 repair by said party of the first part. And it is further agreed that Article Four of
 12 the agreement of March 26th, 1866, to which this agreement is supplemental and
 13 amendatory, shall have no application to the lateral tunnel in this agreement pro-
 14 vided for, except that in case such lateral tunnel shall not be constructed as herein
 15 provided, the party of the second part, in conjunction with other companies or cor-
 16 porations with which the party of the first part may have entered into similar agree-
 17 ments to this, and desiring to unite with the party of the second part, shall have the
 18 right, at their option, to enter and take possession and complete the work, or con-
 19 tract for the completion thereof, at the expense of the party of the first part, deduct-
 20 ing the cost of completion from the first moneys due to the party of the first part
 21 under this agreement.

22 ARTICLE FIFTH.—In case, in the construction of said lateral tunnel, in
 23 the direction herein provided, ground of so unfavorable a character shall be actually
 24 encountered, or, in the opinion of the Engineer of the party of the first part,
 25 is likely to be encountered, as to render a deflection therefrom necessary or
 26 expedient, and the party of the first part shall desire to make such deflection
 27 within the North and South end lines, or such lines protracted, of the claim of the
 28 party of the second part, said first party shall, in such case, inform the second party
 29 in writing of its desire to so change said course as to avoid said unfavorable ground;
 30 and the party of the second part shall, at the earliest moment possible, cause its En-
 31 gineer to meet the Engineer of the party of the first part in conference to settle upon
 32 said deflection, and in case the two do not agree within three days, they shall select
 33 a third person, and the decision of the majority of the three shall be final and binding
 34 upon both parties.

35 ARTICLE SIXTH.—The party of the second part hereby agrees to advance
 36 to said party of the first part, in Gold Coin of the United States, on the Fifth day of
 37 each and every month, Seventy Dollars, (\$70) for every linear foot of said lateral
 38 tunnel hereafter constructed during the preceding calendar month between the end
 39 lines of the North and South boundaries of said second party's mine, or between
 40 such end lines continued eastwardly, until the whole number of feet of said lateral tun-
 41 nel upon which payment shall have been made by the said second party shall equal the
 42 number of linear feet contained in the line marking the course of said lateral tunnel
 43 as hereinbefore designated between the North and South end lines of the mining
 44 claim of the party of the second part, and said sum, so advanced, shall not constitute
 45 a direct liability against said first party, but the same may be discharged as herein-
 46 after provided. And should the party of the second part fail to pay to the party of
 47 the first part, on the Fifth day of any month, such sum or sums as shall be due,
 48 under this agreement, for the number of feet of lateral tunnel constructed during
 49 the preceding month, the said second party shall be liable to said first party for all
 50 direct and consequential damage resulting from such default. The work done
 51 during any month on said lateral tunnel shall be measured on the first day of the
 52 succeeding month, and, if practicable, between the hours of eight o'clock A. M. and

1 twelve o'clock m., and the Engineer, or other representative of said second party,
 2 shall have the right to be present during such measurement. And it is further
 3 agreed that for the purpose of expediting the completion of said lateral tunnel, said
 4 second party shall have the privilege of constructing any portion thereof in front of
 5 its said claim, provided the same be constructed on the projected line of said lateral
 6 tunnel, and conformable in grade, line of direction, dimensions, mode of timbering
 7 and construction, and in all other respects, to the plan and construction of said work
 8 adopted by said first party. And the said party of the first part agrees to repay the
 9 party of the second part in the manner provided in Article Seventh of this Agree-
 10 ment, Seventy Dollars, (\$70) per running foot for each and every foot of said lateral
 11 tunnel so constructed by said second party.

12 ARTICLE SEVENTH.—The party of the first part hereby agrees to repay
 13 the party of the second part, without interest, the advances made under Article Sixth
 14 of this Agreement, and for such portion of the said lateral tunnel as may be con-
 15 structed by said second party under said Article Sixth, by permitting the party of
 16 the second part to deduct monthly one-half the charges that may be due upon each
 17 ton of ore extracted during the preceding month, and reduced or sold as herein pro-
 18 vided, until the whole of said sum so advanced and the whole amount due for any
 19 portion of said lateral tunnel constructed by said second party under the provisions
 20 of the foregoing Article, have been paid. And in case any charge for ore extracted
 21 becomes due before the lateral tunnel herein provided for has reached said second
 22 party's mine, one-half of the said charges shall be deducted by said second party not-
 23 withstanding, and held without interest, and be applied in payment of such advances
 24 when made, until the sum so withheld shall amount to the whole sum to be ad-
 25 vanced by said second party.

26 ARTICLE EIGHTH.—The party of the first part hereby further agrees with
 27 the party of the second part that the said Agreement of March 26th, 1866, shall be and
 28 is hereby so modified as to reduce to One Dollar per ton the charges which shall be
 29 paid by the party of the second part to the party of the first part on every ton of ore
 30 extracted from said second party's mine which shall be reduced at some mill or re-
 31 duction works, or sold, and shall yield bullion of the value in Gold Coin of Forty
 32 Dollars or under per ton; but upon all ores yielding as aforesaid over Forty Dollars
 33 per ton, the charge of Two Dollars per ton shall be paid. And it is understood and
 34 agreed that wherever the word ton is used in this and the Agreement of March 26th,
 35 1866, it shall be construed to mean two thousand (2,000) pounds in weight.

36 ARTICLE NINTH.—As a substitute for Article Thirteenth of the Agreement
 37 of March 26th, 1866, in respect to drainage, it is mutually agreed that the true intent
 38 and meaning of these Articles as to the draining of the mine of the party of the
 39 second part are, that the mine of said second party shall be deemed and considered
 40 drained under this Agreement and that of March 26th, 1866, and the said charges
 41 on ore extracted and reduced, or sold, as hereinbefore provided, shall become due
 42 and payable from and after the time the lateral tunnel provided for in this Agree-
 43 ment shall reach a point equidistant between the North and South end lines of said
 44 second party's mine, or such end lines continued eastwardly, ^{but not before} whether its said mine be
 45 actually drained or not

46 ARTICLE TENTH.—The party of the second part hereby agrees to furnish to
 47 the party of the first part, on or before the Tenth day of each and every month, a full,
 48 fair, and just statement, verified by the oath of the Superintendent or Accountant of
 49 said second party, of the number of tons of ore extracted from said second party's mine
 50 during the preceding calendar month, and reduced or sold, including a statement of
 51 the actual yield in bullion of such ore at each mill or reduction works; and in case
 52 of sale of any ore, the said first party shall have an opportunity to inspect the same

pays (1866)

1 before it shall be removed from its place of deposit at said second party's mine. And
 2 on the said tenth day of each and every month, the said party of the second part
 3 agrees to pay to said party of the first part, in Gold Coin of the United States, the
 4 sum due for ore extracted from said second party's mine during the preceding cal-
 5 endar month as herein provided, and reduced or sold as aforesaid.

6 ARTICLE ELEVENTH.—The party of the second part further agrees not
 7 to allow any water to flow into its said mine through its drifts, whence it would flow
 8 or could be discharged or pumped into the said tunnel or its branches from any
 9 mine, the owners of which have not an Agreement with the party of the first part
 10 with respect to drainage and other benefits, unless it be beyond the control of said
 11 second party to prevent such discharge; and in that case, the said second party agrees
 12 to give prompt information of such fact to said first party.

13 ARTICLE TWELFTH.—In case the party of the first part shall hereafter
 14 construct a drain outside of, parallel to, and on the same level with said main or
 15 lateral tunnel, or both, all the provisions in this and the Agreement of March 26th,
 16 1866, respecting drainage, shall be held to apply to said parallel drain, provided the
 17 same shall not be constructed at a greater distance than Thirty feet from said main
 18 or lateral tunnel, and that it shall be in all respects capable of receiving and carrying
 19 off the water from said second party's mine as effectually as the said main or lateral
 20 tunnel, and that it shall not interfere with the mine, shafts, or works of said party of
 21 the second part, and the same shall be kept in repair in like manner by the said party
 22 of the first part.

23 ARTICLE THIRTEENTH.—It is further agreed that Articles Nineteenth
 24 and Twentieth of the Agreement dated April 4th, 1866, entered into between the
 25 Trustees for the Sutro Tunnel Company, mentioned in the foregoing Preamble, and
 26 the Ophir Silver Mining Company, are hereby made and constituted a part of, and
 27 incorporated into, this Agreement.

28 Said Articles Nineteenth and Twentieth are as follows, to wit:

29 "Article Nineteenth: The parties of the first part agree and bind themselves
 30 that they will not, nor shall their successors or assigns, or any of them, take up or
 31 lay claim to any quartz lode or mining ground which may be developed by the said
 32 Sutro Tunnel within a space of ground lying four thousand feet east from the
 33 western croppings or surface appearance of the mining claims of the party of the
 34 second part on the Comstock Lode; nor will they allow any other person, persons,
 35 or companies, who have now made, or may hereafter make, any location in front of
 36 the mining ground of the party of the second part within the distance in this Article
 37 heretofore mentioned, to work through the said tunnel, or transport any ore, rock, or
 38 debris through the same.

39 "Article Twentieth: The parties of the first part further agree that they will
 40 sell to the party of the second part, within three months after the said second party's
 41 mine is drained as hereinbefore provided for, any portion of a tract of land not ex-
 42 ceeding ten acres in a square body, and situated within two miles from the mouth
 43 of the tunnel, to be designated by the parties of the first part, at some convenient
 44 and accessible point, the party of the second part hereby agreeing to pay therefor at
 45 the rate of five thousand dollars per acre; and the said party of the second part
 46 shall have the right of way through any lands belonging to said tunnel company to
 47 such tract of land which may be so conveyed. And the parties of the first part
 48 further agree to transport any ore belonging to the party of the second part from a
 49 point one thousand feet from the mouth of the tunnel to the land which may have
 50 been so purchased by the party of the second part, at the rate of twenty-five cents
 51 per mile for every ton so transported."

52 ARTICLE FOURTEENTH.—No Agreement between the party of the first
 53 part and any other company or corporation bearing even date herewith shall be held
 54 to be upon terms more favorable than this to such company or corporation, within
 55 the meaning of Article Sixteenth of the Agreement dated March 26th, 1866.

And Whereas, it is deemed for the best interest of this Company to make and enter into said Agreement; therefore

Resolved, That the President and Secretary of this Company be and are hereby authorized and instructed, on behalf and in the name of this Company, and as its act and deed, to execute and acknowledge said Agreement in triplicate, by signing their names thereto as President and Secretary, and by affixing thereto its corporate seal.

In Witness Whereof, I have hereunto set my hand and affixed the corporate seal of said Company on this Second day of April A. D. eighteen hundred and seventy-nine.

*Pelham N. Ames
Secretary of the
Intro Tunnel Company*

State of California,)
City and County of San Francisco.)

I, Pelham M. Ames Secretary
of the Antio Tunnel Company,
do hereby certify that the above and foregoing is a full, true, and correct
copy of a resolution duly passed by the Board of Trustees of said corpora-
tion on this Second day of April
A. D. eighteen hundred and seventy-nine, and recorded on the minutes of
said Company.

In Witness Whereof, I have hereunto set my hand and
affixed the corporate seal of said Company
on this Second day
of April A. D. eighteen
hundred and seventy-nine.

Pelham M. Ames
Secretary of the
Antio Tunnel Company

1 ARTICLE FIFTEENTH. — Each and every of the Articles of this
 2 Agreement shall be binding and of full force upon each party hereto, and upon the
 3 assigns or successors thereof, and said assigns or successors shall be entitled to all
 4 the benefits and privileges thereof as if the same were in each Article distinctly set
 5 forth.

*The words "but not before" in line 7 of page 8
 in line 844 "signing and
 delivery in presence of"*

10

11

12

IN WITNESS WHEREOF, the Sutro Tunnel Company and the
 Mexican Gold and Silver Mining Company, by resolutions
 adopted by their respective Boards of Trustees, and spread
 upon their minutes, have authorized and caused their Presi-
 dents and Secretaries to execute this instrument in tripli-
 cate as the act and deed of said corporations respectively,
 and to affix hereto their respective corporate seals.