

AGREEMENT

THIS AGREEMENT made the 29th day of ~~December~~, 1987, by and between VICTORY MILLS HYDRO COMPANY, INC., a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 2 Greenwich Plaza, Greenwich, Connecticut 06830, (hereinafter referred to as "VICTORY"), and THE SARATOGA LAKE PROTECTION AND IMPROVEMENT DISTRICT, a Lake Management District created under the Laws of the State of New York with offices at R.D. 5, Malta Avenue Extension, Ballston Spa, New York, (hereinafter referred to as "THE DISTRICT").

WHEREAS, THE DISTRICT has identified an existing aquatic weed growth problems as well as a flood problem on Saratoga Lake; and

WHEREAS, VICTORY is the owner of a stop log dam and water flow control structure on Fish Creek approximately ten kilometers down-stream from the New York State Route 9P bridge over Fish Creek, which is the outlet to Saratoga Lake, at a location commonly known as Winnie's Reef; and

WHEREAS, THE DISTRICT believes that the lowering of the lake level of Saratoga Lake for the fall and winter seasons each year will result in a reduction of undesirable aquatic weed growth in Saratoga Lake; and

WHEREAS, THE DISTRICT believes that improved control of the high water level of Saratoga Lake will result in decreased property and other damage to the property owners adjoining Saratoga Lake; and

WHEREAS, THE DISTRICT has requested VICTORY to assist in the control of the water level of Saratoga Lake as aforesaid by means of operation of VICTORY'S aforesaid stop log dam and water flow control structure located at Winnie's Reef; and

WHEREAS, VICTORY has consented to assist in the control of the water level of Saratoga Lake through the operation of its aforesaid water flow control structure at Winnie's Reef.

NOW, THEREFORE, WITNESSETH, THE DISTRICT and VICTORY in consideration of the mutual covenants contained herein, agree as follows:

1. VICTORY, insofar as it lawfully may and consistent with its ability to use the released water for electric generation purposes, hereby consents to draw down the water level of Saratoga Lake by means of VICTORY'S stop log dam and water flow control structure at Winnie's Reef on Fish Creek. VICTORY will perform all work necessary to operate its water flow control structure to attempt such a lake level drawdown, and will, not later than October 1 of each year, open in increments the three (3) control gates located on the North Channel of Winnie's Reef facility and, about October 21 of each and every year, remove all flow control stop boards in each of the sluiceways of the Winnie's Reef facility until April 1 of the following year or the date when Saratoga Lake is free of ice whichever is later.
2. VICTORY further agrees to operate the Winnie's Reef water flow control structure in such a manner as to attempt to maintain the water level of Saratoga Lake at no more than 204 feet above sea level by opening all three (3) control gates located

on the North channel of the Winnie's Reef facility and, to the best of its ability as permitted by water levels, removing the flow control stop boards in each of the sluiceways at the Winnie's Reef water flow control structure whenever the water level at the Winnie's Reef water flow control structure reaches 203.3 feet above sea level.

3. VICTORY does not and cannot guarantee specific water levels at Saratoga Lake since VICTORY'S stop log dam and water flow control structure at Winnie's Reef only partially controls the water level at Saratoga Lake. VICTORY also does not guarantee against any or all undesirable effects, including but not limited to flooding and weed growth, on Saratoga Lake, Fish Creek or any other body of water which may occur during VICTORY'S operation of the Winnie's Reef facility under the terms of this Agreement.
4. THE DISTRICT agrees that it will obtain all necessary permits or permissions from any federal, state, or local regulatory or municipal authorities with jurisdiction over any lake level draw-down and reduction in flow in Fish Creek as well as other efforts to control the water level of Saratoga Lake. All permits or permissions shall be in writing, and copies thereof

shall be delivered to VICTORY prior to the commencement of any attempted drawdown of lake levels. All such permits or permissins shall relieve VICTORY from any and all liability for adverse environmental impacts, if any, arising out of the drawdown.

5. THE DISTRICT hereby agrees to indemnify and hold VICTORY harmless from any and all loss, damage, liability, cost, suit, expense or cause of action arising out of any damage to property of third parties (including real property, personal property and environmental damages) or persons (including injuries resulting in death) directly or indirectly caused by or arising out of or in connection with this Agreement or the work performed hereunder.
6. THE DISTRICT shall maintain in force, during the life of this Agreement, insurance policies which meet or exceed the following requirements. Prior to the commencement of the drawdown of the lake water level, THE DISTRICT will submit to VICTORY, for review and approval, Certificates of Insurance which are in compliance with the following requirements, from insurance companies acceptable to VICTORY. Insurance policies shall provide that they cannot be cancelled or changed without ten (10) days prior written notice to VICTORY. Minimum insurance requirements are:

General Liability (including contractual liability)

Bodily Injury	\$ 1,000,000 each occurrence
	\$ 1,000,000 each aggregate
Property Damage	\$ 1,000,000 each occurrence
	\$ 1,000,000 each aggregate

VICTORY shall be named as an additional insured on the above policies. OK

7. THE DISTRICT assumes all risk of loss, damage or injury to the environment, to real and personal property, and to persons, including but not limited to personal injuries resulting in death, which may occur directly or indirectly arising out of or in any way connected with the operation of the Winnie's Reef water flow control structure under the terms of this Agreement, including but not limited to injuries or damage occurring on Saratoga Lake, along Fish Creek, at the confluence of Fish Creek and the Hudson River or the Hudson River itself.
8. VICTORY reserves the unrestricted right, in its sole discretion, to operate its water flow control structure at Winnie's Reef in any manner made necessary by VICTORY'S electric generation operation regardless of the terms of this Agreement and without liability of any kind to THE DISTRICT.

9. Either party may terminate this Agreement by giving the other party ten (10) days prior written notice; however, the provisions of paragraphs "5.", "6." and "7." shall remain in effect until, after the drawdown of the lake water, the water levels of Saratoga Lake and Fish Creek return substantially to the pre-drawdown, pre-Agreement levels as are normal for the applicable time of the year. In the event THE DISTRICT'S insurance coverage is cancelled, this Agreement shall be similarly cancelled and VICTORY'S obligations shall cease; however, the provisions of paragraphs "5.", "6." and "7." shall remain in effect until the water levels of Saratoga Lake and Fish Creek return substantially to the pre-drawdown, pre-Agreement levels as are normal for the applicable time of the year.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals all on the day and year first above written.

VICTORY MILLS HYDRO
COMPANY, INC.

By: 

Olof S. Nelson, President

THE SARATOGA LAKE PROTECTION
AND IMPROVEMENT DISTRICT

By: 

Mary Schoenecker, Chairperson

STATE OF CONNECTICUT
COUNTY OF FAIRFIELD

On this 21ST day of December, 1987, before me personally came OLOF S. NELSON, to me known, who being by me duly sworn did depose and say that he resides at 44 Patterson Avenue, Greenwich, Connecticut; that he is the President of Victory Mills Hydro Company, Inc., the Corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

Robert Y. Foderer
Notary Public

My Commission expires March 31, 1992.

STATE OF NEW YORK
COUNTY OF SARATOGA

On this 29th day of December, 1987, before me personally came MARY SCHOENECKER, to me known, who being by me sworn did depose and say that she resides at Box 266, Saratoga Springs, New York, that she is the Chairperson of the Board of Commissions of The Saratoga Lake Protection and Improvement District, the lake protection and improvement district created by the Laws of the State of New York described in and which executed the foregoing instrument; that she knows the seal of said district; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Commissioners of said district, and that she signed her name thereto by like order.

Nancy Lee Fodera
Notary Public

NANCY LEE FODERA
NOTARY PUBLIC, State of New York
Qualified in Saratoga County
Commission Expires March 17, 1988