



CHAPTER 77.

An Act to enable the Corporation of the District of Mission to guarantee certain Debentures of the Farmers' Cold Storage Company, Limited.

[Assented to 1st April, 1931.]

WHEREAS the Corporation of the District of Mission is a Preamble.
municipal corporation governed by the provisions of the "Municipal Act":

And whereas the Farmers' Cold Storage Company, Limited, a Company incorporated under the "Companies Act" of the Province of British Columbia, with registered office at Hatzic, British Columbia, is the registered owner of a cold storage and pre-cooling plant being operated at Hatzic, in said municipality, by, and under lease to, the Associated Berry Growers Co-operative Exchange, an Association incorporated under the "Co-operative Associations Act" of the Province of British Columbia:

And whereas the said Farmers' Cold Storage Company, Limited, on the first day of May, 1920, issued debentures to the amount of fifty thousand dollars, and executed a trust deed to The Toronto General Trusts Corporation, as trustee, of its site, buildings, and plant at Hatzic, British Columbia, to secure payment of the said debentures payable ten years from the date thereof, with interest at six per cent. per annum payable yearly:

And whereas The Corporation of the District of Mission, under the authority of By-law No. 88 and pursuant to the provisions of section 51, clauses (11) and (12), of the "Municipal Act," guaranteed the payment of the said debentures:

And whereas the said Farmers' Cold Storage Company, Limited, has redeemed certain of said debentures to the amount of eight thousand dollars and interest thereon:

And whereas the said Farmers' Cold Storage Company, Limited, hypothecated the balance of the said debentures to the Canadian

Bank of Commerce to secure certain indebtedness of the said Company to the said bank:

And whereas there is owing by the said Company to the said bank, for principal in respect of such hypothecation of said debentures, the sum of twenty-four thousand dollars and interest amounting to two thousand three hundred and thirty-two dollars and seventy cents as of the thirty-first day of December, 1930, making together the sum of twenty-six thousand three hundred and thirty two dollars and seventy cents as of said date:

And whereas the said Company has made default in payment of said sums:

And whereas the said Company has requested the Municipal Corporation to guarantee a further issue of ten-year debentures amounting to eighteen thousand dollars for principal, bearing interest at six per cent. per annum, for the purpose, inter alia, of paying and retiring the said debentures of the said Company bearing date the first day of May, 1920: provided that the said Company reduces its present indebtedness to said bank in respect of said debentures of the first day of May, 1920, to the sum of sixteen thousand dollars:

And whereas the Council of the said Corporation of the District of Mission has presented a petition praying that the said Corporation be authorized to guarantee such further issue of ten year, six per cent. debentures of the said Farmers' Cold Storage Company, Limited:

And whereas it is expedient to grant the prayer of the said petition:

Therefore, His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

Short title

1. This Act may be cited as the "District of Mission Contingent Guarantee Act, 1931."

Farmers'
Cold Storage
debenture issue

2. Notwithstanding anything contained in the "Municipal Act," it shall be lawful for the Council of the Corporation of the District of Mission to pass a by law authorizing the giving of a guarantee of payment of the principal and interest of the debentures of the Farmers' Cold Storage Company, Limited, to be payable at the expiration of ten years from the date thereof, and bearing interest at a rate not to exceed six per cent. per annum, payable yearly, to the amount of eighteen thousand dollars, principal. Such by law shall before its final passing require the assent of the electors of the Municipal Corporation, and the provisions of sections 170 to 174, inclusive, of the "Municipal Act" shall apply to the voting on said by law, which shall require the assent of a majority of the votes polled exclusive of those which may be rejected on any of the grounds specified in section 78 of the "Municipal Elections Act."

3. Such guarantee shall not be given until the Farmers' Cold Storage Company, Limited, shall have reduced its indebtedness to the Canadian Bank of Commerce, to a sum not exceeding sixteen thousand dollars, in respect of the issue of debentures of the said Farmers' Cold Storage Company, Limited, bearing date the first day of May, 1920, amounting to forty-two thousand dollars, which were hypothecated by said Company to said bank and are now held by said bank.

Guarantee
conditional on
reduction of debt.

4. The said proposed debentures shall be secured by a trust deed to a trust company registered under the "Trust Companies Act," as trustee for the debenture-holders, of the said Company's land, buildings, plant, and machinery at Hatzic, British Columbia, to secure the payment of the said debentures for eighteen thousand dollars payable ten years from the date thereof, with interest at six per cent. per annum payable yearly, and said debentures and said trust deed shall be in such form as the Inspector of Municipalities may approve.

Trust deed.

5. The following agreement in writing under seal dated the twenty ninth day of November, 1930, made between The Corporation of the District of Mission, therein and hereafter referred to as "The Corporation," of the first part; the said Farmers' Cold Storage Company, Limited, therein and hereafter referred to as "The Company," of the second part; and Associated Berry Growers' Co-operative Exchange, therein and hereafter referred to as "The Exchange," of the third part, is validated and declared to be binding on the said Corporation, the said Company, and the said Exchange.

Agreement
validated.

"THIS INSTRUMENT made the 29th day of November, 1930,

"BETWEEN:

THE CORPORATION OF THE DISTRICT OF MISSION, a body corporate and politic hereinafter called "The Corporation";

"AND
Of the First Part

THE FARMERS' COLD STORAGE COMPANY LIMITED, a company incorporated under the Companies Act and having its registered office at Hatzic, British Columbia hereinafter called "The Company";

"AND
Of the Second Part

ASSOCIATED BERRY GROWERS' CO-OPERATIVE EXCHANGE, an association incorporated under the "Co-operative Associations Act" of the Province of British Columbia, and having its registered office at Hatzic, British Columbia hereinafter referred to as "The Exchange";

Of the Third Part

"1. WHEREAS the Company proposes, in pursuance of its powers, to issue its Debentures to the amount of Eighteen Thousand Dollars in lawful money of Canada, bearing interest at six (6%) per cent.

"2. AND WHEREAS the Company is authorized, by its Memorandum, to engage in the industry of a cold storage, ice-making, pre-cooling and refrigerat

ing plant within the limits of the municipal corporation, and is engaged in such industry:

"3. AND WHEREAS the Company has requested the Corporation to guarantee the payment of the debentures of the Company to the extent of Eighteen Thousand (\$18,000) Dollars and interest thereon at the rate of six (6%) per cent. per annum;

"4. AND WHEREAS the Corporation has agreed to give such guarantee, subject to the provisions hereinafter contained, and subject to the consent of the Provincial Legislature of the Province of British Columbia to be expressed by way of a Private Bill for that purpose:

"5. AND WHEREAS the Company proposes to lease its plant, and hereby agrees to lease the same, being the lands and premises hereinafter described, to the Exchange, during the currency of said proposed debentures, namely, for the period of 10 years commencing May 1, 1930, on terms which will provide that the Exchange will covenant to pay to the Company, in trust, an annual sum for the payment of the principal and interest of said debentures, and shall also provide for the payment of the legal costs connected with the preparation and execution of this agreement, and of the Trust Deed hereinafter mentioned and of and incidental to the petition for the Private Act hereinafter referred to, exclusive of all other charges which said lease may provide for, and WHEREAS the Exchange proposes to raise such annual and other sums by way, inter alia, of a commission or percentage charge of at least three (3%) per cent. on the net returns on all fruit handled by it, and belonging to the members of the Exchange and or its patrons:

"6. NOW, THEREFORE, THIS AGREEMENT WITNESSETH that in consideration of the sum of One (\$1,000) Dollar now paid by each of the parties hereto to each of the other parties, (the receipt whereof is hereby by each of them respectively acknowledged,) and in consideration of the premises and of the mutual covenants herein contained, the parties hereto mutually covenant and agree each with the other as follows:

"7. The Company agrees that it will at all times during the continuance of these presents, operate and maintain, or cause to be operated and maintained the said cold storage and pre-cooling plant, situate on the land herein after described, for a period of at least 5 months during each year.

"8. The Company agrees that the debentures to be issued shall be 10 year 6 per cent. debentures, with coupons attached bearing interest payable yearly, and that the said debentures shall be secured by a Trust Deed made by the Company in favour of a Trustee for the Debenture holders, creating a charge in favor of the said Trustee on the whole of the freehold property of the Company and on the buildings, plant and machinery erected thereon, and contained therein.

"9. The Company agrees that, in consideration of the mutual covenants and the guarantee herein contained, that it will execute in favor of the Corporation, before the final delivery of these presents, a mortgage in favor of the Corporation, as part consideration for the guarantee of the debentures of the Company thereon by the Corporation, which mortgage shall be for the sum of Eighteen Thousand (\$18,000) Dollars, and shall bear interest at 6 per cent. per annum, and shall be a first charge on the lands of the Company subject only the said debentures.

"10. The Corporation covenants with the Company that if the Company shall make default in payments of any interest on any of the said debentures for a period of one month after the Trustee has demanded the same, then the Corporation shall upon three months' additional notice pay such interest to the holders of such debentures.

" 11. The Corporation further covenants that if the Company shall make default in the payment of the said debentures when the same become payable, then the Corporation will upon three months' notice of such default, pay the said debentures.

" 12. The Company agrees to establish and maintain a sinking fund for the redemption of the said debentures not later than August 31, 1940, and for that purpose shall pay to the Trustee on or before the 31st day of August in each of the years 1931 to 1940, both inclusive, the sum of Seven Hundred and Twenty Dollars (\$720.00), and will also pay to the Trustee on or before August 31st in each of the years during the currency of said debentures, the interest due thereon.

" 12A. Provided that if at any time and from time to time hereafter in the opinion of the Trustee, and a duly qualified accountant to be selected by the Exchange and the Trustee, the annual sum herein before provided to be paid to the Trustee for the purpose of providing a sinking fund for the payment of said debentures shall be insufficient for the payment by August 31, 1940, of all the said debentures for the time being outstanding, then the said annual sum shall be increased to such an annual sum as the Trustee and said accountant shall consider to be necessary to provide for the whole of the debentures for the time being outstanding being paid by means of the said sinking fund by August 31, 1940. The Trustee shall have power to purchase, with such sinking fund and interest, in the market, any of said debentures at the lowest price which in the opinion of the Trustee is at the time obtainable, but such price shall not exceed one hundred (100%) per cent. of the face value of said debentures and the accrued and unpaid interest.

" 13. The Company agrees to repay to the Corporation all advances of interest which may be made by the Corporation under the terms of this agreement within sixty (60) days after such payment, together with interest on any such advances of interest at the rate of (8%) per cent. per annum.

" 14. In the event of the Corporation being required to pay the principal of the said debentures, then the Corporation shall thereupon be placed in the position of debenture holders, and the rights of the debenture holders shall vest in the Corporation and shall thereby be transferred and assigned to the Corporation by such payment.

" 15. The said Trust Deed shall not be delivered to the said Trustee for the Debenture holders until it shall have been approved by the Council of the Corporation and said Trust Deed shall contain the following clause:

" Provided that the debenture holders shall not enter into possession of, sell, dispose of, nor in any way realize on the land, real property, improvements, buildings, machinery or equipment of the Company, against which the debentures may form a charge without first having given to the Corporation of the District of Mission three months' notice of their intention to do so, in writing; which said notice shall be personally delivered to the Clerk of the Corporation of the District of Mission."

" 16. The Company and the Exchange agree that in consideration of said guarantee, the Corporation shall be, and is hereby empowered to hold the said debentures until the same shall be sold, and to hold the proceeds of the sale thereof for the credit of the Company, and to pay the said proceeds, first, to the Canadian Bank of Commerce at Mission City, B.C., on account of the Company's indebtedness to said Bank, and, second, to reimburse the Corporation for any costs and expenses incurred in connection with these presents, or in connection with the said Trust Deed and for the said Private Act, and, third, to pay any balance to the Company.

" 17. It is understood and agreed that the Corporation shall not give the guarantee herein provided for, nor deliver the said debentures bearing such

guarantee, until the present indebtedness of the Company to the Canadian Bank of Commerce, is reduced to at least the sum of Sixteen Thousand (\$16,000) Dollars.

"18. It is understood and agreed that the Corporation shall be entitled to receive, as a condition precedent to the delivery of such debentures bearing the guarantee of the Corporation, the balance of a certain issue of debentures of the Company, issued and dated May 1, 1920, amounting to the principal sum of Forty-Two Thousand (\$42,000) Dollars, at present held by the Canadian Bank of Commerce, at Mission City, which latter debentures shall thereupon be cancelled and destroyed.

"18A. Forthwith upon delivery of such outstanding debentures of the issue of May 1, 1920, and upon payment of any sums owing to the Corporation by the Company, other than for taxes, the Corporation agrees to execute a release to the Company of the mortgage dated May 1, 1920, registered as charge No. 44019 C.

"19. The Company agrees that the Reeve of the Corporation shall be ex-officio one of the Directors of the Company in addition to the number of Directors authorized by the Articles of Association of the Company, and shall have the same rights, privileges and powers as the other Directors of the Company but shall not be subject to retirement by rotation, as provided by Section 54 (21) (a) of the Municipal Act, and the Company agrees to provide in its Articles for the same, and shall thereby also provide that no liability shall attach to the Reeve or the Corporation by virtue of being a Director of said Company.

"19A. The Exchange agrees that the Reeve of the Corporation or other member of the Municipal Council, to be nominated for that purpose by the said council, shall be ex-officio one of the Directors of the Exchange in addition to the number of Directors authorized by the Rules of the Exchange and shall have the same rights, privileges and powers as the other Directors of the Exchange.

"20. The Corporation agrees to petition the Provincial Legislature of the Province of British Columbia for a Private Act of the Legislature to grant the Corporation power, inter alia, to give the said guarantee, and until the prayer of such petition is granted by the Legislature, this agreement shall not be binding on the Corporation.

"21. The Company agrees to pay to the Corporation all legal and other expenses connected with the preparation of this agreement, private act and said Debentures, and such costs shall be a lien on said debentures, and the Corporation shall be entitled to be repaid all such expenses out of the proceeds of the sale of said debentures.

"22. The Exchange covenants that it will pay for and on account of the Company, the annual sums required to be paid for interest and sinking funds under the provisions of Paragraph 12 and 12a hereof, as and when they become due, and that it will pay such sums to the Trustee, and such payment shall be credited to the Exchange as payments on account of rent, as provided in Paragraph 23 hereof. The Exchange covenants with the Corporation that it will raise such annual sums and other sums herein agreed to be raised, by way, inter alia, of a commission or percentage charge of at least three (3%) per cent, on the net returns on all fruit handled by it, and belonging to the members and/or patrons.

"23. The Company covenants and agrees with the Exchange to give a lease to the Exchange for a term equal to the currency of said debentures of the said lands and premises hereinafter described at an annual rental sufficient to pay the sums mentioned in paragraph 12 and 12a hereof, and the Exchange

covenants and agrees with the Company that it will enter into such a lease on said terms. The said lease shall contain the usual covenants.

"24. The Company and the Exchange covenant and agree with the Corporation that any lease entered into between them shall be subject to the approval of the Municipal Council of the Corporation, and that the Company and the Exchange will amend their articles, memorandum or Rules as the case may be, if necessary for such approval being so required.

"25. The Company covenants with the Corporation that it will not lease the said lands and premises to any lessee other than the Exchange, and the Exchange covenants and agrees with the Corporation that it will not assign said lease, without the consent of the Municipal Council of the Corporation, and the Company and the Exchange covenant with the Corporation that they will amend their articles, memoranda, or Rules, as the case may, if necessary to provide for such consent being required.

"25A. Provided however that nothing herein contained shall be deemed to prohibit the Exchange from sub-letting a portion or portions of said premises.

"26. The lands and premises hereinbefore referred to are more particularly known and described as Part 0.7 of an acre more or less of Lot 476, Group (1), as shown outlined Red and lettered "C" on sketch deposited No. 41 and all that portion of Lot Six (6), Group Three (3), lying to the South and East of the Right-of-Way of the Canadian Pacific Railway as shown on Map 908 to which the letter "E" has been assigned, all in the Municipality of Mission, in the District of New Westminster, Province of British Columbia.

"27. The Exchange covenants with the Corporation that during the currency of said debentures, no profits or revenue surplus from the business of the Association shall be distributed, by way of dividends or distribution among its members, patrons or otherwise, so long as any interest or instalment of sinking fund under said debentures remains due and unpaid, and that during the currency of said debentures no profits or revenue surplus shall be distributed to the members and/or patrons in fully or partly paid up shares of the Association.

"28. The Company and the Exchange covenant with the Corporation that the cold-storage and pre-cooling plant of the Company will at all times during the period provided by paragraph seven be operated and maintained as a public cold-storage and pre-cooling plant, and that the rates and tolls to be charged for storage and service shall not be discriminatory against any member or class of the public.

"29. The Exchange agrees to furnish the Corporation with a copy of its annual Balance Sheet.

"In WITNESS whereof these parties have hereunto caused these presents to be executed.

(Corporation Seal) THE CORPORATION OF THE DISTRICT
OF MISSION

W. H. Wren, Reeve
Jno. A. Barr, Clerk

(Corporate Seal) FARMERS COLD STORAGE COMPANY,
LIMITED

A. E. Catchpole, Pres.
Jno. A. Barr, Sec.-Treas.

(Corporate Seal) THE ASSOCIATED BERRY GROWERS
CO-OPERATIVE EXCHANGE

J. E. Jackson, President
C. G. Evans, Sec.-Man."

Corporation may
take further
security.

6. The Corporation may, in addition to the security provided by said proposed trust deed, take security by mortgage or otherwise for the repayment of any sums paid by the Corporation under the said guarantee or by virtue of said agreement, and may pass all necessary by-laws to carry the provisions of this section into full force and effect, and any security taken may be registered in the name of the Corporation in the proper Land Registry Office.

Corporation may
borrow money to
meet guarantee.

7. In the event of the Company defaulting in payment of the principal of said debentures and the Corporation being obliged to pay such principal pursuant to its guarantee, the Council of the Corporation shall have the power to pass a by-law to borrow the money for that purpose upon the credit of the municipality, repayable within the same municipal year or otherwise as the Council may decide, and such by-law shall not require the assent of the electors, but shall be subject to the approval of the Inspector of Municipalities, and the Inspector of Municipalities may in respect thereof grant a certificate pursuant to section 445 of the "Municipal Act."

Corporation to
take property on
default.

8. In the event of the Corporation of the District of Mission paying the principal of the said debentures, or any part thereof, pursuant to said guarantee, the trustee named in the said proposed trust deed shall be, and is, authorized and directed in the name of the Company to grant, transfer, and release unto the Corporation of the District of Mission the lands, plant, equipment, personal property, and other assets of the said Company described in the said proposed trust deed, and thereupon the said lands, plant, equipment, personal property, and assets of the Company shall vest in the Corporation absolutely without the necessity of foreclosure or other Court proceedings, and the said Corporation is thereupon authorized to accept such conveyance of said lands, plant, equipment, personal property, and assets, and hold the same without the necessity of any by-law being passed by the Council of the said Corporation for that purpose, and on production of such conveyance the Registrar of Titles at New Westminster shall issue in the name of the Corporation of the District of Mission a certificate of indefeasible title to said lands.

Corporation may
deal with acquired
property.

9. The Corporation of the District of Mission shall thereupon have the power, by resolution of the Council, and subject to the approval of the Inspector of Municipalities, to operate the plant or to enter into any contract with any person or company to operate the said plant, and to sell, lease, or dispose of the whole or any portion of the said plant, land, machinery, equipment, property, and assets of the said Company so transferred to the Corporation.

Sale subject
to consent of
Municipal Council

10. In the event of the Company selling the said plant during the currency of said proposed debentures, the purchaser shall stand

charged with the performance of all covenants, terms, and conditions in the said hereinbefore-recited agreement and agreed and required to be performed and observed by the Company, and shall assume, carry out, and perform all the obligations, terms, and conditions imposed on the Company by this Act, and no sale shall be made without the consent of the Municipal Council of the Corporation.

11. In the event of the Exchange assigning its lease of said plant during the currency of said proposed debentures, the assignee shall stand charged with the performance of all covenants, terms, and conditions contained in said hereinbefore recited agreement and agreed and required to be performed and observed by the Exchange, and shall assume, carry out, and perform all the obligations, terms, and conditions imposed on the Exchange by this Act.

Agreement
binding on assignee
of lease

12. During the currency of said proposed debentures, the said lands, cold storage and pre-cooling plant and machinery of the Company shall not be charged or encumbered in any way except as provided in this Act.

Plant not to be
further encumbered

13. Where the provisions of the "Municipal Act" conflict with the provisions of this Act, the provisions of this Act shall prevail.

Conflict

VICTORIA, B.C.

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