

VICTORIA.



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ELIZABETHÆ SECUNDÆ REGINÆ.

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No. 6676.

An Act to validate an Agreement between the Geelong Harbor Trust Commissioners and Sou-West Frozen Food Packers Proprietary Limited.

[29th November, 1960.]

WHEREAS by an agreement under seal dated the twentieth day of November One thousand nine hundred and fifty-eight the Geelong Harbor Trust Commissioners (hereinafter referred to as "the Commissioners") leased certain land vested in the Commissioners and described in the said agreement together with the cool store thereon to Sou-West Frozen Food Packers Proprietary Limited (hereinafter referred to as "the company") on the terms and conditions and subject to the covenants set out in the said agreement :

And whereas the said lease was approved by the Governor in Council on the sixteenth day of December One thousand nine hundred and fifty-eight :

And

And whereas the Commissioners and the company have entered into an agreement under seal dated the eighth day of October One thousand nine hundred and fifty-nine with respect to the erection by the company on the land described in the said lease of a food processing and freezing works and providing *inter alia* for the cost of the erection thereof to be partly borne by the Commissioners and varying certain of the terms and conditions contained in the said lease :

And whereas it is expedient to remove doubts which have arisen as to the power of the Commissioners to enter into and carry out the said agreement of the eighth day of October One thousand nine hundred and fifty-nine and as to the validity thereof :

Be it therefore enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say) :—

1. This Act may be cited as the *Geelong Harbor Trust (Freezing Works Agreement) Act 1960*. Short title.

2. The Geelong Harbor Trust Commissioners shall be deemed to have been authorized to enter into the hereinbefore recited agreement dated the eighth day of October One thousand nine hundred and fifty-nine (a copy of which is set out in the Schedule to this Act) which is hereby ratified validated and approved and notwithstanding anything in any Act the said Commissioners may carry the said agreement into effect and in particular may contribute to the cost of the erection as hereinbefore recited of the works referred to in the said agreement the sum of Fifteen thousand pounds as therein provided.

Validation of  
agreement in  
Schedule.

## SCHEDULE.

### Section 2.

AN AGREEMENT made this 8th day of October One thousand nine hundred and fifty-nine BETWEEN THE GEELONG HARBOR TRUST COMMISSIONERS of 65 Brougham-street, Geelong (hereinafter called "the Commissioners") of the one part and SOU-WEST FROZEN FOOD PACKERS PROPRIETARY LIMITED the registered office of which is at 416 Bay-street, Port Melbourne in the State of Victoria (hereinafter called "the Company") of the other part WHEREAS :—

(1) By an agreement under seal dated the Twentieth day of November One thousand nine hundred and fifty-eight (hereinafter referred to as "the said agreement") the Commissioners leased to the Company the land described therein and situated near Corio Quay North Geelong in the Parish of Moorpanyal and County of Grant together with the concrete cool store erected thereon for the term of ten years on the terms and conditions and subject to the covenants therein set out and

(2) By covenant set out in the said agreement the Company covenanted that it would not without the consent in writing of the Commissioners use or permit the use of the demised premises for any purpose other than the processing canning and packaging of food stuffs and

(3) The Commissioners are desirous of securing the construction of such buildings on the demised premises as will make full and adequate provision both during the term of the said lease and thereafter for the establishment on an efficient and adequate scale of the industry of processing canning packaging and freezing of food stuffs and of obtaining an increased rental during the balance of the demised term and of commanding a greater rent in respect thereof after the expiration of the said term and

(4) The Company in consideration of the Commissioners contributing to the cost of the erection of a food processing and freezing works (the plans and specifications of which have already been mutually agreed upon between the Commissioners and the Company) on the said land has agreed to pay the further sums hereinafter set out in addition to the rent reserved under the said agreement and subject to the variations of the terms and conditions of the said lease hereinafter set out

### NOW THIS AGREEMENT WITNESSETH :—

1. The Company agrees and undertakes forthwith to construct and establish a food processing and freezing works (hereinafter called "the Works") in accordance with the plans and specifications which have already been mutually agreed upon between the Commissioners and the Company, the said Works to be constructed on the said land on the precise site already agreed upon and determined between the Commissioners and the Company PROVIDED that the contract or contracts entered into by the Company for such construction in accordance with the said plans and specifications shall be approved by the Commissioners before execution by the Company.

2. The Company shall install equip and fit the said Works in such manner and with such plant and equipment as shall be necessary to efficiently carry on in the said Works the business of processing canning packaging and freezing food stuffs and the Works shall be fully completed and ready for use by the Company for the said purpose on or before the Thirty-first day of December One thousand nine hundred and fifty-nine.

3. The Commissioners shall contribute to the cost of the erection of the Works the sum of Fifteen thousand pounds (£15,000) payable in the following manner namely : as and when progress claims invoices and other accounts relating to the construction of the said Works are received by the Company the Company shall deliver the same to the Commissioners and the Commissioners shall make payments to the person or persons entitled in accordance with the contract or contracts entered into by the Company but subject to the Commissioners being satisfied that the relevant progress claim invoice or account is properly attributable to the Works and is certified by the architect or otherwise to the satisfaction of the Commissioners PROVIDED ALWAYS that the aggregate of the payments made by the Commissioners pursuant to this clause shall not exceed the sum of Fifteen thousand pounds (£15,000).

SCHEDULE—continued.

4. The Works shall become and shall be at all times the property of the Commissioners and shall be included in and form part of the premises demised under the said agreement.

5. The Company shall pay in addition to the rent reserved under the said agreement thirty-five quarterly instalments of Three hundred and seventy-five pounds (£375) each payable on the first days of January April July and October in each year the first of such instalments to be paid on the first day of October One thousand nine hundred and fifty-nine. The Company shall pay each and every instalment as the same falls due notwithstanding that the lease contained in the said agreement has been determined prior thereto PROVIDED ALWAYS that the Company shall not be required to pay any instalment otherwise due and payable if the said lease has been properly determined by the Company in consequence of any default of the Commissioners thereunder.

6. To secure to the Commissioners the payment by the Company of the quarterly instalments and each of them set out in the previous clause (but not including the rent reserved under the said agreement) the Company shall grant and give to the Commissioners a debenture charging its undertaking and property in the form set out in the schedule hereto and do all acts matters and things necessary to enable registration of the said debenture under the Companies Act and otherwise to effectively secure the Commissioners in the manner aforesaid.

7. The Company on paying the rent reserved in the said agreement and the quarterly instalments payable hereunder and on observing the several covenants contained in the said agreement and herein shall in substitution for the option contained in clause (4) (d) of the said agreement have the option of renewing its lease of the demised premises for a further term of five years at rentals to be calculated from a basic figure of Seven thousand five hundred pounds (£7,500) which is to be adjusted for each of the said further five years in manner similar to that prescribed in clause 1 (b) (ii) of the said agreement and otherwise upon the same terms and conditions thereof upon giving to the Commissioners not less than six months' notice in writing prior to the expiration of the lease contained in the said agreement of its intention to exercise this option.

8. Each instalment payable under the provisions of clause 5 hereof shall become immediately due and payable to the Commissioners in any of the events following :—

- (a) if the Company gives one month's notice in writing to the Commissioners of its intention to satisfy in full all instalments remaining unpaid ;
- (b) if the Company makes default for fourteen days in the payment of any instalment and the Commissioners give notice in writing that unless payment is made within seven days all instalments shall forthwith become due and payable ;
- (c) if a distress or execution be levied or issued against any of the property of the Company and is not satisfied or paid out within seven days ;
- (d) if an order be made or an effective resolution be passed for winding up the Company ;
- (e) if the Company shall cease or threaten to cease to carry on its business ;
- (f) if a receiver be appointed of the Company's assets or any part thereof.

9. The Company shall pay all costs charges and expenses of the preparation and execution of this agreement of the said debenture and of a collateral guarantee including all filing and registration fees and duty payable.

IN WITNESS whereof the Common Seals of the Commissioners and of the Company have been hereunto affixed.

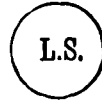
THE COMMON SEAL of THE GEELONG }  
 HARBOR TRUST COMMISSIONERS }  
 was hereunto affixed in the presence of }



L. L. BURCH, Chairman.  
 R. R. PHILLIPS, Secretary.  
 H. ROY FIDGE, Commissioners.

## SCHEDULE—continued.

THE COMMON SEAL of SOU-WEST  
 FROZEN FOOD PACKERS PRO-  
 PRIETARY LIMITED was hereunto  
 affixed in the presence of



J. T. SAVAGE, Director.  
 F. JAMES, Director.  
 G. STUART, Secretary.

## THE SCHEDULE.

SOU-WEST FROZEN FOOD PACKERS PROPRIETARY LIMITED.  
 (Incorporated in the State of Victoria under the *Companies Act* 1938.)

## DEBENTURE.

Issued pursuant to clause 16 of the Company's memorandum of association and article 67 of the Company's articles of association and a resolution of the Directors passed on the \_\_\_\_\_ day of \_\_\_\_\_ One thousand nine hundred and fifty-nine.

1. Sou-West Frozen Food Packers Proprietary Limited the registered office of which is at 416 Bay-street, Port Melbourne, in the State of Victoria (hereinafter called "the Company") having agreed with The Geelong Harbor Trust Commissioners (hereinafter called "the Debenture Holder" which expression shall where the context so admits include their successors and assigns) by an agreement under seal and dated the \_\_\_\_\_ day of \_\_\_\_\_ One thousand nine hundred and fifty-nine to pay to the Debenture Holder thirty-five quarterly instalments of Three hundred and seventy-five pounds (£375) each (in all Thirteen thousand one hundred and twenty-five pounds (£13,125)) payable on the first days of January April July and October in each year the first of such instalments to be paid on the first day of October One thousand nine hundred and fifty-nine the Company will on each such appointed day or on such earlier date as the instalments hereby secured become payable under the provisions hereof pay each such instalment to the Debenture Holder.

2. The Company as beneficial owner hereby charges with the said payments its undertaking and all its property whatsoever and wheresoever both present and future including its uncalled capital by way of floating security.

3. The Company shall not without the consent in writing of the Commissioners create any mortgage or charge ranking in priority to or *pari passu* with this Debenture.

4. The moneys hereby secured shall become immediately payable in any of the events following—

- (a) if the Company gives one month's notice in writing to the Commissioners of its intention to satisfy in full all instalments remaining unpaid and such notice has expired ;
- (b) if the Company makes default of fourteen days in the payment of any instalment and the Commissioners give notice in writing that unless payment is made within seven days all instalments shall forthwith become due and payable ;
- (c) if a distress or execution be levied or issued against any of the property of the Company and is not satisfied or paid out within seven days ;
- (d) if an order be made or an effective resolution be passed for winding up the Company ;
- (e) if the Company shall cease or threaten to cease to carry on its business ;
- (f) if a receiver be appointed of the Company's assets or any part thereof.

5. The Debenture Holder may at any time after any instalment hereby secured has become due and payable and has remained unpaid for a period of more than fourteen days appoint by writing a receiver and manager of the property hereby charged upon such terms as to remuneration and otherwise as the Debenture Holder shall think fit and may from time to time appoint any receiver and manager so appointed and appoint another in his stead.

SCHEDULE

SCHEDULE—continued.

6. A receiver and manager so appointed shall be the agent of the Company and shall have power—

- (1) To take possession of and get in the property hereby charged ;
- (2) To carry on or concur in the carrying on of the business of the Company ;
- (3) To sell or concur in selling any of the property hereby charged or otherwise deal therewith and on such terms in the interests of the Debenture Holder as he shall think fit to make any arrangement or compromise which he shall think expedient.

Provided always that nothing herein shall make the Debenture Holder liable to such receiver and manager as aforesaid in respect of his remuneration costs charges expenses or otherwise.

7. The net profits of carrying on the said business and the net proceeds of the said sale shall be applied by the receiver and manager subject to the claims of all secured or unsecured creditors (if any) ranking in priority to this Debenture.

First in payment of all costs charges and expenses of and incidental to the appointment of the receiver and manager and the exercise by him of all or any of the powers aforesaid including the reasonable remuneration of the receiver and manager and all outgoings properly paid by him.

Secondly in and towards the payment to the Debenture Holder of all moneys due on this Debenture.

Thirdly any surplus shall be paid to the Company.

8. Notices may be served by the Debenture Holder or the Company by post and shall be deemed to have been served twenty-four hours after the time of posting.

IN WITNESS whereof the Common Seal of the Company has been hereunto affixed.

THE COMMON SEAL of SOU-WEST }  
FROZEN FOOD PACKERS PRO- }  
PRIETARY LIMITED was hereunto }  
affixed in the presence of }

Director.  
Director.  
Secretary.

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