
St. Philip's Sydney Leasing Approval 1928.

No. 19. 1928.

AN ORDINANCE to approve of a Lease of a certain piece or parcel of land situate in the City of Sydney and Parish of St. Philip originally acquired for a site for a Parsonage in the said Parish of St. Philip and to consent to the application of the income to be derived thereunder.

WHEREAS by a certain Indenture of Conveyance made the Sixth day of October 1869 between John Croft therein described of the first part James Sutherland Mitchell therein described of the second part and John Campbell and John Alexander Mathews therein described and thereafter called Trustees of the third part the land thereafter described being the land described in the lease set out in the first Schedule hereto was conveyed to the said John Campbell and John Alexander Mathews and their heirs to be held as a site for a Parsonage of the Church of the United Church of England and Ireland erected in the Parish of St. Philip in the City of Sydney and known as St. Philip's Church and as and for the residence of the incumbent of the said Church for the time being upon the trusts and for the purposes declared in and subject to the provisions of an Act of the Governor and Legislative Council of the then Colony of New South Wales passed in the eighth year of the reign of His late Majesty King William IV. Number 5 in reference to lands appropriated as sites for dwelling houses for clergymen of the United Church of England and Ireland AND WHEREAS by Section 26 of the Church of England Trust Property Act 1917 it is provided that it shall be lawful for the Synod of the Diocese for which any trust property is for the time being held if it shall appear to such Synod expedient by reason of circumstances subsequent to the creation of the trusts of such property by ordinance to direct that such property be leased or otherwise dealt with in manner provided by such Ordinance and to provide for the application of the real and personal property arising from any such lease AND WHEREAS the present Trustees of the said piece or parcel of land are William Henry Crago of

Sydney Surgeon Gerard Addington D'Arcy-Irvine of Neutral Bay near Sydney aforesaid Bishop-Coadjutor and William James Levick of Cremorne near Sydney aforesaid Builder (hereinafter referred to as "the Trustees") AND WHEREAS by an Ordinance cited as "Land Ordinance Procedure and Delegation of Powers Ordinance 1926" it was ordained that the Standing Committee of the Synod of the Diocese of Sydney was thereby appointed for the purpose of exercising and accordingly might during the recess of the Synod of the Diocese exercise in the place of such Synod all or any of the powers and functions and do and make all or any of the things referred to in (inter alia) Section 26 of the Church of England Trust Property Act 1917 AND WHEREAS the Trustees have made a Lease of the said land (a copy whereof is set out in the first Schedule hereto) but the said Lease was made subject to the approval of the Synod of the Diocese of Sydney and it is expedient that the said Lease should be directed by Ordinance under the said Act AND WHEREAS it is expedient that the rents profits and annual income to be derived under the said Lease from the said piece or parcel of land should be applied for the purposes set forth in the second schedule hereto Now therefore the Standing Committee of the Synod of the Diocese of Sydney in pursuance of the powers in that behalf conferred upon it by the Church of England Trust Property Act 1917 and by the Land Ordinance Procedure and Delegation of Powers Ordinance 1926 and in pursuance of the powers vested in the said Synod by the Constitutions for the Management and good government of the Church of England within the State of New South Wales or otherwise in the name and in the place of the said Synod declares directs and rules as follows:—

1. By reason of circumstances which have arisen subsequent to the creation of the trusts hereinbefore mentioned relating to the said land it is expedient that the said land shall be leased by the Trustees and that the rent and profits of the said lands shall be dealt with in the manner hereinafter mentioned.

2. The Lease a copy whereof is set forth in the first Schedule hereto is a proper Lease to be granted by the Trustees and the same is hereby approved and directed accordingly under the said Act.

3. The rents profits and annual income to be derived under the said Lease from the said piece or parcel of land shall be held upon trust to apply the same for such purposes as the Standing Committee of the Synod shall from time to time determine and in the meantime in manner set forth in the second Schedule hereto.

4. This Ordinance may be cited as "St. Philip's Sydney Leasing Approval Ordinance 1928."

THE FIRST SCHEDULE.

THIS DEED made the _____ day of _____ one thousand nine hundred and twenty eight in pursuance of the Conveyancing Act 1919 BETWEEN WILLIAM HENRY CRAGO of Sydney in the State of New South Wales Surgeon GERARD ADDINGTON D'ARCY-IRVINE of Neutral Bay near Sydney aforesaid Bishop-Coadjutor and WILLIAM JAMES LEVICK of Cremorne near Sydney aforesaid Builder (hereinafter called "Lessors") of the one part and CLARENCE BONDED AND FREE STORES LIMITED (hereinafter called "Lessee") of the other part WITNESSETH that in consideration of the rent hereinafter reserved and of the Lessee's covenants hereinafter contained THEY the Lessors DO demise and lease unto the Lessee ALL THAT parcel of land situated in the said City of Sydney Parish of St. Philip County of Cumberland and State of New South Wales being the whole of allotments seven and eight and part of allotment number nine of section number three of the site of the old Military Barracks commencing on the Eastern side of Clarence Street eighty three feet two inches northerly from Margaret Street and bounded on the west by said Clarence Street bearing northerly fifty four feet five inches on the north by Petty's Hotel being a line bearing easterly seventy one feet seven inches on the east by a lane bearing southerly forty eight feet four inches and on the south by a line bearing westerly seventy one feet six inches to the point of commencement TOGETHER with the premises erected thereon known as Numbers six eight and ten Clarence Street Sydney TOGETHER with the Lessors' fittings and fixtures now in and upon the said demised premises and any further and/or substituted fittings and fixtures (if any) which may hereafter during the continuance

of this demise be placed by the Lessors on the said premises TO BE HELD by the Lessee from the eighth day of March one thousand nine hundred and twenty-eight for the term of three years thence ensuing YIELDING AND PAYING therefor during the said term the yearly rent of eight hundred and fifty pounds (£850) by equal monthly payments of seventy pounds sixteen shillings and eight pence (£70 16s. 8d.) each payable on the eighth day of each month during the said term the first payment having been made on the eighth day of April one thousand nine hundred and twenty-eight AND also yielding and paying as and by way of bonus for the consent provided for in clause fifteen hereof by equal monthly instalments on the days hereinbefore provided for payment of rent and as an additional or increased rent such a sum as will represent or be equal to 20% of any yearly sum over and above eight hundred and fifty pounds (£850) per annum which the Lessee may receive or be entitled to receive under any sublease of the said premises granted by it with such consent as aforesaid such increased or additional rent to commence and to be paid from the date of commencement of and to be payable by the Lessee to the Lessors only during the subsistence of such sublease or any extension or renewal thereof or continuance of tenancy thereunder.

The Lessee COVENANTS with the Lessors:

1. That the Lessee covenants with the Lessors to pay rent.
2. Provided that in the event of damage by fire lightning flood or tempest rent shall abate until the premises are restored.
3. To pay for all gas electric light and current consumed upon the demised premises as also any water consumed or used on the demised premises in excess of the assessed annual water rates.
4. And to repair reasonable wear and tear (not arising from want of external or internal painting and repairs) and damage by fire lightning flood and tempest only excepted.
5. And to leave the premises in good repair (having regard to the condition thereof at the commencement of the lease) reasonable wear and tear (not arising from want of external or internal painting and repairs) and damage by fire lightning floor and tempest only excepted.

6. That the Lessee will relieve the Lessors of and from all liabilities in respect of any notices received relating to the regulations and requirements of any lawful authority including the Board of Health the Water and Sewerage Board and any other Statutory or Municipal Body in relation to the demised premises and from all matters and repairs save as hereinafter excepted not involving repairs alterations or works of a structural character And will in all respects conform to the rules and regulations for the time being in force in connection with the Shops and Factories Act or any similar or substitutive State or Commonwealth Act which may from time to time be in force and will indemnify and save harmless the Lessors in respect thereof PROVIDED however that the Lessee shall not be liable to comply with the terms of any such notices as aforesaid or any notices whatsoever if the compliance therewith would involve the carrying out in respect of the said premises of repairs alterations or works of a structural character except such structural alterations additions or repairs as are occasioned by reason of the nature of the business carried on by the Lessee in the said premises or the number of persons employed therein.

7. That the Lessee will not store heavy goods on the upper floors of the said building or do anything whereby the said building or any part thereof may be strained or the walls or floors caused to sag or deflect from their right lines and will keep and maintain the lift and fixtures in clean tenantable and good working order and condition and the said building together with the lift and fixtures upon or belonging to the same so repaired and maintained and kept at the end or other sooner determination of the term will peaceably yield and deliver up to the Lessors or their assigns reasonable wear and tear (not arising from want of external or internal painting and repairs) and damage by fire storm and tempest or other inevitable accident only excepted.

8. That the Lessee will during the last year of the said term

- (a) Paint where previously painted all outside woodwork and ironwork as also the inside woodwork iron and cement work belonging to the said premises with two coats of proper oil colour in a workmanlike manner and

(b) Wash distemper and whiten all walls belonging to the said premises.

9. That the Lessors may at all reasonable times enter and view state of repair and that the Lessee will repair according to notice in writing and that in default the Lessors may repair AND that the Lessee will reimburse to and hereby agrees to indemnify the Lessors against any outlay or damages costs charges or expenses which the Lessors may incur sustain or be liable for in respect of the straining or overloading of the floors with goods of a heavy character as also of all other costs charges or expenses incurred by the Lessors under the authority of these presents all of which costs charges and expenses shall be treated as expended for the benefit of the Lessee and shall be repaid to the Lessors on demand and if not paid shall be recoverable from the Lessee as and for rent in arrear.

10. And that the Lessors may enter and carry out requirements of public authorities and repair under the lease PROVIDED that in case the compliance with such requirements shall be occasioned by the nature of the business carried on by the Lessee the costs and charges incurred or sustained by the Lessors in performing such work shall be repaid to them by the Lessee on demand and if not so paid shall be recoverable from the Lessee as and for rent in arrear.

11. That the Lessee will not do anything to prejudice the Lessors' insurance on the said demised premises or cause any increased premium thereon to be payable and if and in case any increase in the rate of the Lessors' Insurance shall be made by reason of any acts of the Lessee done with the approval of the Lessors then the Lessee will give due notice to the Insurance Company in which the premises are insured before the act shall be committed and the Lessee shall bear and pay the additional premium.

12. That the Lessee will not during the term hereby granted without the consent in writing of the Lessors (which is not to be unreasonably withheld) make any alterations in or additions to the external or internal architectural plan elevation construction or arrangement of any building for the time being on the demised premises or injure any of the principal timber or walls of such building.

13. That the Lessee will not allow noise or nuisance to be created or committed or allowed to be continued in or upon any part of the demised premises so as to unreasonably interfere with the comfort of neighbours nor shall any goods be brought or kept therein of an explosive character nor shall any rats or other vermin be allowed to harbour on the said premises or any part thereof nor any other thing done or suffered whereby the sanitary condition of the said premises or the reasonable comfort of neighbours or their property shall be interfered with or any insurance policy on the said building be prejudicially affected or the rates of premiums thereon increased and the Lessee will not at any time during the said term carry on or permit to suffer to be carried on in the demised premises any noisome dangerous or offensive trade or occupation.

14. That the Lessee will during the said term use and occupy the demised premises as and for Bonded and/or Free Stores or some other business of non-offensive character only.

15. And will not assign or sublet without leave.

THE Lessors COVENANT with the Lessee

(1) The said Lessors covenant with the said Lessee for quiet enjoyment.

(2) And to pay rates and taxes except excess water rates.

PROVIDED ALWAYS AND IT IS HEREBY AGREED AND DECLARED as follows:—

(a) That in case the rent or any part thereof is in arrear for the space of 21 days although no formal demand therefor has been made or in case default is made in the fulfilment of any covenant condition or stipulation whether expressed or implied herein and on the part of the Lessee to be performed or observed or in the event of the said Lessee or any Lessee of the premises deriving title through the Lessee going into liquidation except for the purpose of reconstruction or becoming insolvent or making any assignment of his estate for the benefit of creditors then and in any of such cases it shall be lawful for the Lessors at their option to re-enter into and upon the said demised premises and the same again

to hold repossess and thereby determine the estate of the Lessee therein as if these presents had never been made out but without releasing the Lessee from liability in respect of the breach or non-observance of any such covenant condition or stipulation.

- (b) That the covenants powers and provisions implied by sections 84 and 85 of the Conveyancing Act 1919 shall not apply to this lease.
- (c) That if and whenever any dispute or question shall arise between the Lessors and Lessee touching these presents or anything herein contained or the construction hereof or the rights duties or liabilities in relation to the premises the matter in difference shall be referred to two Arbitrators or their Umpire in all respects pursuant to "The Arbitration Act 1902" or any then subsisting modification thereof.

THE SECOND SCHEDULE.

First--In payment of all costs and expenses incidental to obtaining this Ordinance.

Secondly--In payment of rates and taxes on the land referred to in this Ordinance (amounting at the present time to £284 16s. 4d. per annum) now due and hereafter to accrue in respect of the period of the tenancy under the said Lease.

Thirdly--In aid of the funds available from time to time for the purposes of the Stipend of the Rector of the Church of St. Philip to the extent of a sum not less than one hundred and fifty pounds (£150) per annum nor more than one hundred and seventy five pounds (£175) per annum.

Fourthly--In payment of an amount towards the rates and taxes on the School of the Church of St. Philip equal to the difference between the annual rents received for such School and the amount of the rates and taxes payable thereon.

Fifthly--In payment of the existing debt on the old Rectory of the Church of St. Philip amounting to five hundred and twenty pounds (£520) and the interest thereon and in payment of the balance in and towards the maintenance and upkeep of the

Church buildings and for other parochial objects or for any one or more of the said purposes or partly for one and partly for another or others of the same.

I certify that the Ordinance as printed is in accordance with the Ordinance as reported.

W. J. G. MANN,
Acting Chairman of Committees.

I certify that this Ordinance was passed by the Standing Committee of the Synod of the Diocese this third day of December, 1928.

C. R. WALSH,
Secretary.

I assent to this Ordinance.

JOHN CHARLES SYDNEY.

4th December, 1928.