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5/1912

AN ORDINANCE to authorise the mortgaging of certain land situated in George Street West and St. Barnabas Lane and Mountain Street Sydney in the County of Cumberland and also the leasing of certain land situate in St. Barnabas Lane Sydney aforesaid such lands being more particularly described in the Schedules hereto AND to provide for the application of the proceeds thereof.

WHEREAS one Joseph Dickson was seized for an Estate of inheritance in Fee Simple in possession of certain land which includes the land comprised in the First Schedule hereto AND WHEREAS by Indenture of conveyance bearing date the twenty-second day of December One thousand eight hundred and sixty three registered number 524 Book 94 made between the said Joseph Dickson of the one part and the Reverend Thomas Smith Minister of St. Barnabas Church of the other part for the consideration therein mentioned the said Joseph Dickson did appoint and did also grant bargain sell alien release and confirm unto the said Thomas Smith and his heirs ALL THAT piece or parcel of land therein described being the land described in the first schedule hereto to have and to hold the said land hereditaments and premises with the appurtenances unto the said Thomas Smith and his heirs to such uses upon such trusts and to and for such ends intents and purposes as the said Thomas Smith should by any deed or deeds or by his last Will and Testament appoint and in default of and until such appointment to the use of the said Thomas Smith his heirs and assigns for ever AND WHEREAS by Indenture of conveyance bearing date the fourth day of September One thousand eight hundred and sixty-eight number 155 Book 110 made between the said Thomas Smith of the one part and the Bishop of Sydney of the other part for the consideration therein mentioned the said Thomas Smith did appoint grant bargain sell and release unto the Bishop of Sydney and his successors all that piece or parcel of land hereinbefore mentioned to hold the same unto the Bishop of Sydney and his successors to the use thereafter expressed that is to say to the use of the Bishop of Sydney and his successors for ever UPON TRUST to permit the same to be used as part of or as appur-

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tenant to certain other land and to permit the erection and maintenance thereon of an extension of the Church known as St. Barnabas or of some other Church for the celebration of Public Worship according to the use of the united Church of England and Ireland and of a Minister's dwelling subject to the provisions of the Act four William IV. number five and of a School House under the superintendence of the Minister for the time being licensed or otherwise authorized to officiate in the said Church or of any of such buildings as aforesaid. AND WHEREAS one Jeremiah Evans was seized for an Estate of inheritance in Fee Simple in possession of certain land which included part of the land comprised in the Second Schedule. AND WHEREAS by Indenture of Conveyance bearing date the ninth day of December one thousand eight hundred and sixty-three registered number 895 Book 85 made between the said Jeremiah Evans of the first part the Reverend Thomas Smith Ai. Earnshaw and Frederick Thomas Miller of the second part. And the Bishop of Sydney of the third part under which deed it was recited that the said Jeremiah Evans had contracted with the said Thomas Smith Ai. Earnshaw and Frederick Thomas Miller for the sale to them of the land therein described but that the said Thomas Smith Ai. Earnshaw and Frederick Thomas Miller had requested that the said land should be conveyed to the said Bishop of Sydney and his successors upon the trusts and in manner therein mentioned for the considerations therein mentioned the said Jeremiah Evans by direction of the said Thomas Smith Ai. Earnshaw, and Frederick Thomas Miller did appoint and did also grant bargain sell alien release and confirm unto the said Bishop of Sydney and his successors ALL that land therein described of which part of the land described in the Second Schedule forms part TO HAVE AND TO HOLD the land hereditaments and premises unto the said Bishop of Sydney and his successors for ever UPON TRUST for the erection and maintenance thereon of a School House for the teaching and instruction of Children either gratuitously or otherwise according to such system under such regulations and in such manner in all respects as shall from time to time be directed or sanctioned by the Clergyman or Minister for the time being of the Church known as "St. Barnabas Church in Sydney" aforesaid AND WHEREAS by deed of consent dated the fourteenth day of May One thousand nine hundred and twelve Registered Number

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171 Book 967 the Bishop of Sydney vested the said land conveyed by the said Jeremiah Evans in the Church of England Property Trust Diocese of Sydney their successors and assigns AND WHEREAS the said Joseph Dickson was seized for an Estate of inheritance in Fee Simple in possession of certain land which included part of the land comprised in the Second Schedule AND WHEREAS by Indenture of Conveyance bearing date the thirtieth day of August One thousand eight hundred and sixty-five Registered Number 13 Book 95 made between the said Joseph Dickson of the one part and the Reverend Thomas Smith of the other part for the considerations therein mentioned the said Joseph Dickson did appoint and did also grant bargain sell alien release and confirm unto the said Thomas Smith and his heirs ALL THAT piece or parcel of land therein described of which the remaining part of the land described in the Second Schedule forms part TO HAVE AND TO HOLD the said lands messuages and hereditaments unto the said Thomas Smith and his heirs to such uses upon such trusts and to and for such ends intents and purposes as the said Thomas Smith should by any deed or deeds or by his last Will and Testament appoint and in default of appointment to the use of the said Thomas Smith his heirs and assigns for ever AND WHEREAS by Indenture of Conveyance bearing date the twenty fourth day of December One thousand eight hundred and sixty-eight Registered Number 682 Book 111 made between the said Thomas Smith of the one part and Patrick Lindesay Crawford Shepherd John Barnett and William Nixon of the other part for the considerations therein mentioned the said Thomas Smith did appoint and did also grant bargain and sell alien release and confirm unto the said Patrick Lindesay Crawford Shepherd John Barnett and William Nixon and their heirs ALL THAT piece or parcel of land therein described and which included part of the land described in the Second Schedule TO HAVE AND TO HOLD the said lands messuages and hereditaments unto the said Patrick Lindesay Crawford Shepherd John Barnett and William Nixon their heirs to the use of the said Patrick Lindesay Crawford Shepherd John Barnett and William Nixon their heirs and assigns for ever AND WHEREAS by Declaration of Trust dated the twenty-fourth day of December One thousand eight hundred and sixty-eight Registered Number 684 Book 111 the said Patrick Lindesay Crawford Shepherd John Barnett and William Nixon declared that the land

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hereinbefore conveyed by the said Thomas Smith was held by them in trust for the School connected with St. Barnabas Church Sydney aforesaid AND WHEREAS the said Patrick Lindesay Crawford Shepherd John Barnett and William Nixon subsequently departed this life AND WHEREAS by Deed of Consent dated the fourteenth day of May One thousand nine hundred and twelve Registered Number 172 Book 967 the Bishop of the Diocese of Sydney by virtue of the powers vested in him vested the said land lastly hereinbefore mentioned in the Church of England Property Trust Diocese of Sydney their successors and assigns AND WHEREAS by Indenture of Conveyance bearing date the thirty-first day of August One thousand eight hundred and seventy-one Registered Number 787 Book 126 made between the said Thomas Smith of the one part and Patrick Lindesay Crawford Shepherd John Barnett and James Pemell the younger of the other part for the considerations therein mentioned the said Thomas Smith did appoint and did also grant bargain sell alien release and confirm unto the said Patrick Lindesay Crawford Shepherd John Barnett and James Pemell the younger and their heirs ALL THAT piece or parcel of land therein described of which the remaining part of the land described in the Second Schedule forms part to hold the said land hereditaments and premises unto the said Patrick Lindesay Crawford Shepherd John Barnett and James Pemell the younger and their heirs to the use of the said Patrick Lindesay Crawford Shepherd John Barnett and James Pemell the younger their heirs and assigns for ever AND WHEREAS by Declaration of Trust dated the twentieth day of September One thousand eight hundred and seventy-one Registered Number 789 Book 126 the said Patrick Lindesay Crawford Shepherd John Barnett and James Pemell the younger declared that the land hereinbefore lastly described was held by them in trust for the School connected with Saint Barnabas Church Sydney aforesaid AND WHEREAS the said Patrick Lindesay Crawford Shepherd and John Barnett subsequently departed this life AND WHEREAS by deed of consent dated the twenty-sixth day of June One thousand nine hundred and twelve Registered Number 68 Book 969 the said James Pemell the younger now known as James Pemell by virtue of the powers vested in him vested the said land lastly hereinbefore described in the Church of England Property Trust Diocese of Sydney their successors and assigns AND WHEREAS the land described in the Third

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Schedule forms part of the land referred to in the hereinbefore recited indenture of the twenty-fourth day of December One thousand eight hundred and sixty-eight Registered Number 682 Book 111 and the thirty-first day of August One thousand eight hundred and seventy-one Registered Number 787 Book 126 and also forms part of the land vested in the Church of England Property Trust Diocese of Sydney by virtue of the hereinbefore recited deeds of consent of the fourteenth day of May One thousand nine hundred and twelve Registered Number 172 Book 967 and the twenty-sixth day of June One thousand nine hundred and twelve Registered Number 68 Book 969 AND WHEREAS the School house known as Saint Barnabas has been erected upon part of the land described in the Second Schedule hereto but it has been considered desirable to erect a New School and Hall upon the said land or otherwise remodel the School house and generally to make improvements to carry on the work and School. AND WHEREAS for the purposes aforesaid it is necessary that moneys should be raised over the pieces of land in the First and Second Schedules hereto and the buildings erected and to be erected thereon to secure the repayment of any moneys so borrowed as aforesaid with interest thereon AND WHEREAS it is expedient that any advance or advances of money not exceeding in the aggregate the sum of two thousand pounds should be obtained upon the security of the said land and buildings comprised in the First and Second Schedules hereto for the purposes aforesaid. AND WHEREAS it is expedient to lease the land described in the Third Schedule hereto AND WHEREAS by reason of circumstances which have occurred since the creation of the aforesaid trusts it has become inexpedient to carry out or observe the particular purposes to which the said land described in the Schedules hereto are by the said Trusts devoted the Synod of the Diocese of Sydney in pursuance of the powers in that behalf conferred upon it by the Constitutions for the management and good government of the Church of England within the State of New South Wales and of all powers vested in the said Synod by the "Church of England Property Act of 1889" or otherwise ordains directs and rules as follows:—

1. By reason of the exigencies of the case and the circumstances which have occurred since the creation of the said recited

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trusts it has become inexpedient to carry out or observe in their entirety the particular purpose or purposes to which the said land described in the Schedules hereto is by the said trust devoted.

2. That for the purpose of carrying out and giving effect to such trusts so far as they affect parts of the lands described in the Schedules it is expedient to obtain from time to time an advance or advances of money not exceeding in the aggregate £2000 on the security of the land comprised in the First and Second Schedules hereto and the buildings to be erected thereon.

3. That the said pieces of land described in the first and second Schedules and buildings erected and to be erected as aforesaid and the appurtenances may be from time to time mortgaged to secure the repayment of the moneys so authorised to be borrowed as aforesaid.

4. That the amount or amounts so to be from time to time raised (after deducting thereout all expenses) shall be paid to the Churchwardens for the time being of the said Church of Saint Barnabas and shall be by them applied for the erection of a new School and Hall upon the said land or otherwise remodelling the Schoolhouse and generally making improvements to carry on the work and School.

5. That the said pieces of land and all buildings thereon may be mortgaged from time to time for the purpose of raising any sum or sums of money not exceeding in the aggregate £2000 with which to discharge or renew the Mortgage or Mortgages now authorised or any mortgage or mortgages substituted therefore and any interest accrued due in respect thereof.

6. The land buildings and appurtenances or any portion or portions thereof described in the Third Schedule hereto may with the consent of the Archbishop and the Standing Committee at any time hereafter and from time to time be demised or leased freed from the trusts aforesaid upon building or occupation leases or for such other suitable purpose or purposes as the Rector and a majority of the Churchwardens for the time being of the said Parish may determine with power to lay out and dedicate roads or lanes upon and through the said land or any part thereof provided that the term of any such lease or leases shall

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not exceed Fifty years at such rent or rents fixed varying or progressive and upon and subject to such terms covenants and conditions as the Rector and a majority of the Churchwardens for the time being of the said Parish may direct or approve, but so as there be reserved in every such lease or leases the best rent that can reasonably be obtained for the same having regard to the nature of the covenants entered into by the lessee without taking any fine or premium for the making thereof and so as there be contained in every such lease or leases a covenant on the part of every lessee his executors administrators and assigns that he and they shall not use or cause or permit to be used the demised premises or any part or parts thereof for the purposes of carrying on the trade or business of a publican distiller brewer wine ale or beer seller or spirituous liquors or any dangerous noxious or offensive trade or business whatsoever. And also that every and any such lessee his executors administrators or assigns shall not use or cause or permit to be used the demised premises for Sunday trade in any form.

And every such lease shall contain a condition for re-entry by the lessor or lessors for non-payment of rent by the lessee or lessees within a reasonable time to be therein specified or a breach or non-performance of any of the covenants therein contained and so as the lessee or lessees do execute a counterpart and do thereby covenant for payment of the rent thereby reserved.

7. Subject to any lease or leases granted, or tenancy or tenancies created pursuant to the authority in that behalf hereinbefore conferred the land described in the schedules hereto with the buildings and appurtenances shall with the consent of the Archbishop and the Standing Committee from time to time be used in such manner for the benefit of the Church of England in the said Parish as the Rector and a majority of the Churchwardens for the time being of the said Parish may from time to time determine freed from the trust declared as aforesaid.

8. The rents profit and income payable under or derivable from any lease or leases or use of the land in the schedules hereto shall be held by the Trustees for the time being of the said land after payment thereof of the expenses of and incidental to this Ordinance and to any lease or leases of the said land or portions thereof and the formation of any roads or lanes and all other necessary outgoings including rates taxes and insurance UPON TRUST in

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the first place to apply the same for or towards the payment of the Annual Registry Assessment and Synod expenses next in payment of the interest on the money borrowed next in setting aside the sum of two pounds ten shillings per centum per annum on the original sum borrowed and with the consent of the Archbishop and the Standing Committee the surplus to such general Church purposes in connection with the said Parish as the Rector and a majority of the Churchwardens may determine.

9. This Ordinance may subject to any rights to be acquired under it be repealed or amended as the Synod of the Diocese may from time to time determine.

10. This Ordinance shall be styled and cited as the "S. Barnabas Sydney Mortgaging and Leasing Ordinance of 1912."

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THE FIRST SCHEDULE REFERRED TO.

ALL THAT piece or parcel of land lying and being situated within the City of Sydney Parish of Petersham in the State of New South Wales commencing at the Northern side of Parramatta Street at a point on the building line thirty-five feet eleven and a half inches Westerly from the South-west corner of Athlone Place and bounded on the South by the building line of Parramatta Street bearing westerly thirty-four feet on the West by a line bearing northerly ninety-nine feet eight and a half inches to the South-west corner of S. Barnabas' Church Allotment on the North by a line dividing it from the said allotment bearing Easterly thirty-three feet ten and three-quarter inches and on the East by a line bearing Southerly to the North-west corner of a brick house thence by the Western side of the said house being in continuation thereof to the point of commencement containing by admeasurement twelve and a half perches be the said contents or dimensions a little more or less.

THE SECOND SCHEDULE REFERRED TO.

ALL THAT piece or parcel of land situate in Mountain Street (late Athlone Place) and S. Barnabas' Lane City of Sydney Parish of Petersham County of Cumberland State of New South Wales containing by admeasurement ten and a half perches commencing at the intersection of Mountain Street with the southern side of



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S. Barnabas Lane and bounded on the North by S. Barnabas Lane bearing Westerly 84 feet 2 inches on the West by a line bearing Southerly 37 feet 6 inches thence on the South by lines partly along the faces of brick walls in all 84 feet to Mountain Street thence on the West by Mountain Street bearing Northerly 32 feet 9 inches to the point of commencement be the said several dimensions a little more or less.

## THE THIRD SCHEDULE REFERRED TO.

ALL THAT piece or parcel of land situate in Saint Barnabas Lane City of Sydney Parish of Petersham County of Cumberland State of New South Wales containing by admeasurement twenty and a quarter perches commencing at a point on the Southern side of St. Barnabas Lane distant 84 feet 2 inches Westerly from Mountain Street (late Athlone Place) and bounded on the North by St. Barnabas Lane bearing Westerly 64 feet on the West by a line bearing Southerly 86 feet to land in application No. 9213 thence on the South by the Northern boundary of said application and a line in prolongation thereof bearing Easterly 65 feet on the East by a line bearing Northerly 88 feet to the point of commencement be the said several dimensions a little more or less.

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

E. W. MOLESWORTH,

*Deputy Chairman of Committees.*

We certify that this Ordinance was passed this ninth day of October, 1912.

E. CLAYDON } *Secretaries of*  
W. R. BEAVER } *Synod.*

I assent to this Ordinance.

JOHN CHARLES SYDNEY.

22/10/12.