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*St. James' Smithfield Variation of Trusts Vesting and  
Leasing Ordinance 1970*

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No. 24, 1970

AN ORDINANCE to vary the trusts of, to vest and to authorise the leasing of certain land in the Municipality of Fairfield and to provide for the application of the rents and profits therefrom and purposes incidental thereto.

WHEREAS by Indenture of Conveyance dated the 12th day of September 1856 between William Reece of the one part and The Bishop of Sydney of the other part (Registered No. 209 Book 45) the land and hereditaments described in the First Schedule hereto were vested in The Bishop of Sydney in fee simple AND WHEREAS such land is church trust property held upon trust for the erection thereon of a church or chapel for the performance of divine worship according to the rites of the United Church of England and Ireland and also for the erection of a dwelling house for a clergyman in holy orders to be licensed by the said Bishop of Sydney for the time being to the cure of the said church and also for the erection of a school house or for all or any of the said objects as the said Bishop of Sydney should from time to time determine AND WHEREAS by Indenture of Conveyance dated the 15th day of June 1857 between Mary Chisholm of the one part and The Bishop of Sydney of the other part (Registered Number 183 Book 217) the land and hereditaments described in the Second Schedule hereto were vested in The Bishop of Sydney in fee simple AND WHEREAS such land is church trust property held upon trust for the erection thereon of a church or chapel for the performance of divine worship according to the rites of the United Church of England and Ireland and also for the erection of a dwelling house for a clergyman in holy orders to be licensed by The Bishop of Sydney for the time being to the cure of the said Church and also for the erection of a school house or for all or any of the said objects as the said Bishop of Sydney should for the time being determine AND WHEREAS Church of England Property Trust Diocese of Sydney (hereinafter called the "Corporate Trustee") is entitled to be registered as proprietor in fee simple of the land comprised in Certificate of Title Volume 8168 Folio 215 more particularly described in the Third Schedule hereto AND WHEREAS such land is church trust property held upon trust for the Parish of St. James Smithfield but no trusts in writing have been declared concerning the same AND WHEREAS by Ordinance No. 45 of 1961 entitled "St. James Smithfield Vesting and Land Sale Ordinance 1961" the land described in the First Schedule was vested in the Corporate Trustee and authority was thereby given

*St. James' Smithfield Variation of Trusts Vesting and  
Leasing Ordinance 1970*

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for the sale of part of the land described in the First Schedule hereto (namely the land described in the Second Schedule to the said Ordinance being Lot 1 in Deposited Plan Number 208678) AND WHEREAS the last abovementioned land has now been sold AND WHEREAS it is expedient that the land comprised in the Second Schedule hereto be vested in the Corporate Trustee AND WHEREAS by reason of circumstances which have arisen subsequent to the creation of the trusts upon which the land comprised in the Second Schedule hereto and the residue of the land comprised in the First Schedule hereto and the land comprised in the Third Schedule hereto are held it is inexpedient to carry out and observe the same AND WHEREAS it is proposed to lease the residue of the land described in the First Schedule hereto together with part of the land described in the Second Schedule hereto and the whole of the land comprised in the Third Schedule hereto AND WHEREAS the land proposed to be leased is by more recent survey described in the Fourth Schedule hereto NOW the Standing Committee of the Synod of the Diocese of Sydney in the name and place of the said Synod HEREBY DECLARES RULES ORDAINS AND DIRECTS as follows:—

1. The land described in the Second Schedule hereto be and the same is hereby vested in the Corporate Trustee.

2. By reason of circumstances which have arisen subsequent to the creation of the trusts upon which the land described in the Fourth Schedule hereto is held it is inexpedient to carry out and observe the same to the extent to which the same are hereby varied and it is expedient that the land described in the Fourth Schedule hereto be leased.

3. The Corporate Trustee (in this clause called the "Lessor") is hereby authorised and empowered to lease the land described in the Fourth Schedule for a term not exceeding fifty (50) years to Permewans Limited or such other person or corporation as the Lessor may approve (hereinafter called the "Lessee") and subject to such terms and conditions as may be approved and required by the Lessor including but not limited to the following:—

A. The lease shall be for a period of fifty (50) years to commence from the date mutually agreed upon by the Lessor and the Lessee.

B. The basic annual rental payable under the said lease shall be as follows:—

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*St. James' Smithfield Variation of Trusts Vesting and  
Leasing Ordinance 1970*

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- (i) During the first five (5) years of the lease at the rate of Ten thousand five hundred dollars (\$10,500) per annum payable quarterly in advance.
- (ii) During each succeeding five (5) years of the term of the lease the greatest of:—
- (a) Ten thousand five hundred dollars (\$10,500) per annum or
  - (b) the basic annual rental payable during the previous five (5) years of the term or
  - (c) an amount (per annum) equal to nine per centum (9%) of the unimproved capital valuation of the land such valuation to be determined upon the basis set forth in the lease and shall be the capital sum which the fee simple of the land might be expected to realise if offered for sale on such reasonable terms and conditions as a bona fide seller would require but assuming that on the first day of the said period:—
    - (1) the lease had not been granted,
    - (2) no building or buildings or other improvements comprised in the premises hereby leased had been erected on the land, but all development and other permits and consents necessary for the erection thereof had been granted and were effective, and
    - (3) there were no financial or similar restriction or hindrance or rules, regulations, ordinances and proclamations which would at the date of valuation prevent the erection of the building or buildings or other improvements comprised in the premises hereby leased on the first day of the said period.

Such rent shall be payable quarterly in advance.

C. In addition to the basic annual rental the Lessee shall covenant to pay as additional rental an amount equivalent to two and one half per centum (2½%) of all retail sales made by the Lessee in one (1) year of the lease term above the base figure. The base figure during the first five (5) years of the lease term shall be Six hundred thousand dollars (\$600,000) and upon any revision of the basic annual ground rent the base figure shall be the amount of Six hundred thousand dollars (\$600,000) amended by the multiplying factor:—

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*St. James' Smithfield Variation of Trusts Vesting and  
Leasing Ordinance 1970*

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Revised Ground Rent

Ground Rent at commencement of Lease

D. A covenant by the Lessee to erect a building for use by the Lessee as a supermarket with or without sub-tenants and with ample parking area adjoining, such plans and specifications for such building to be approved by the Lessor.

E. A covenant by the Lessee to pay all the reasonable fees of the Lessor's architects relating to the erection of the building.

F. Payment by the Lessee of rates, land tax, insurance and other outgoings or charges on the land to be leased.

G. Covenants by the Lessee that without prejudice to any other obligation imposed by the Lessor under the lease the Lessee shall not use or permit or suffer the use of the premises hereby leased or in part thereof:—

- (a) Otherwise than for commercial, retail, residential and garaging purposes including public entertainment Provided that in the case of any public entertainment or the use of any auditorium in any leased premises the prior consent by the Standing Committee to any proposed use shall be first obtained in writing;
- (b) for any illegal or immoral purpose;
- (c) for the sale by wholesale of tobacco in any form;
- (d) in any way connected with gambling;
- (e) for the sale or distribution on the said premises of liquor (construed in this paragraph (e) as it was defined in the Liquor Act, 1912 as at 22 August, 1966 but so as to exclude liquor produced and sold or distributed for medicinal purposes or for purposes other than human consumption) in any of the following ways:—
  - (i) in a restaurant;
  - (ii) at social functions held in premises used commercially as reception rooms;
  - (iii) on the premises of a club or any like association;
  - (iv) in or from any hotel, shop or other point of delivery;
  - (v) otherwise [to the extent to which it is not referred to in sub-paragraphs (i) to (iv) inclusive of this paragraph (e)] for the manufacture, sale or distribution of any liquor otherwise than in the course of or incidental to a

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*St. James' Smithfield Variation of Trusts Vesting and  
Leasing Ordinance 1970*

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business not carried on as a main or as one of a number of main businesses for the manufacture, sale or distribution of liquor;

- (f) in any way connected with narcotic drugs except as part of the normal trading practices of a registered chemist or a registered pharmacist;
- (g) for the erection of any sign or advertisement which expressly or impliedly refers to tobacco or alcoholic liquor in such a position as to be visible from the outside of the premises leased or any part thereof Provided that this prohibition may be waived by the Lessor in the case of any non-illuminated signs relating to tobacco in or adjacent to any kiosk or shop premises which relate to goods sold therein;
- (h) on Sundays for purposes of trade except the operation of automatic vending machines in essential purposes and for such trade as the law may at any time and from time to time permit authorise or make lawful for the sale of food and petrol or pharmaceutical supplies and other necessary emergent services.

H. A covenant by the Lessee not without the consent of the Lessor to name or permit any other person or body to name the building by any name in any way imputing a connection with the Lessor or the Parish of St. James Smithfield.

I. A proviso for re-entry on non-payment of rent or non-performance of the covenants and conditions.

J. A covenant by the Lessor for quiet enjoyment.

K. That the Lessee will not at any time during the term of the lease assign underlet or part with possession of the premises in whole or in part without the previous consent in writing of the Lessor such consent not to be unreasonably withheld in respect of a reasonable and responsible person or corporation.

L. A covenant to keep in good repair and deliver up in the same condition at the expiration of the lease.

M. Such other covenants and conditions as may be approved and required by the Corporate Trustee.

4. The Corporate Trustee shall apply the rents in respect of the said lease as follows:—

- (a) First in payment of the costs and disbursements of and incidental to this Ordinance and of any lease granted pur-

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*St. James' Smithfield Variation of Trusts Vesting and Leasing Ordinance 1970*

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suant hereto to the extent that such costs and disbursements are not paid by the Lessee.

- (b) Secondly in payment of any costs and disbursements of and incidental to this Ordinance and of any lease granted pursuant hereto which have been paid by the said Parish.
- (c) Thirdly in payment of any Diocesan assessments due in respect of the income from the lease.
- (d) Fourthly in reimbursement and payment of all monies disbursed or borrowed by the said Parish in purchasing the land described in the Third Schedule and of all rates and taxes paid by the said Parish in respect thereof.
- (e) Fifthly in reimbursement of all monies disbursed by the said Parish in providing any temporary accommodation which may be necessary for the rector between the time vacant possession of the present rectory is required and the erection or purchase of the new rectory.
- (f) Sixthly a sum not exceeding Twenty thousand dollars (\$20,000) towards the cost of erecting or purchasing a new rectory and a sum not exceeding Forty thousand dollars (\$40,000) towards the erection of a new parish hall in the said Parish or such greater amounts as Standing Committee may by resolution approve.
- (g) Seventhly the balance of such rents from time to time to such purpose or purposes as may be determined by resolution of the Parish Council of the said Parish and approved by resolution of the Standing Committee.

5. This Ordinance may be cited as "St. James' Smithfield Variation of Trusts, Vesting and Leasing Ordinance 1970".

#### FIRST SCHEDULE

ALL THAT parcel of land situated at Prospect in the District of Cabramatta in the Colony of New South Wales being Lots 10 and 11 of Section No. 20 of the Village of Smithfield COMMENCING in Albert Street at the North-east corner of Lot 12 and bounded on the North by Albert Street on the East by allotment No. 6 on the South by Lots 4 and 5 on the West by Lot 12 to the commencing point and being the whole of the land comprised in Conveyance Registered No. 209 Book 45.

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*St. James' Smithfield Variation of Trusts Vesting and  
Leasing Ordinance 1970*

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SECOND SCHEDULE

ALL THAT parcel of land situate at Prospect in the District of Cabramatta in the Colony aforesaid being Lots 12, 13 and 14 of Section 20 of the Village of Smithfield COMMENCING at the junction of Albert Street and Justin Street and bounded on the North by Albert Street on the East by Lot 11 on the South by Lots 1, 2 and 3 and on the West by Justin Street to the commencing point and being the whole of the land comprised in Conveyance Registered No. 183 Book 217.

THIRD SCHEDULE

ALL THAT piece or parcel of land in the Municipality of Fairfield Parish of St. Luke County of Cumberland containing an area of 27½ perches being Lot B in plan lodged with Transfer No. JH 578534 and being the whole of the land in Certificate of Title Volume 8168 Folio 215.

FOURTH SCHEDULE

ALL THAT piece or parcel of land at Smithfield in the Municipality of Fairfield Parish of St. Luke and County of Cumberland having frontages to Justin Street, The Horsley Drive and Liverpool Road, more particularly shown in sketch plan annexed to Surveyor's Certificate of Surveyor G. W. Oborn dated 25th June 1970 comprising Lot 2 in Deposited Plan Number 208678, Lot B in File Plan Number 419187 and Lots 13 and 14 and part Lot 12 of the Parish of Smithfield COMMENCING at a point 304' 1½" from the intersection of The Horsley Drive and Liverpool Road bounded thence on the East by a line bearing 179 degrees 59 minutes 20 seconds 120' 0" bounded on the North by a line bearing 90 degrees 49 minutes 30 seconds 51' 0" bounded again on the East by a line bearing 179 degrees 59 minutes 20 seconds 207' 0½" bounded again on the North by a line bearing 89 degrees 39 minutes 30 seconds 58' 9½" to the North-western alignment of Liverpool Road bounded thence on the South-east by the aforesaid alignment bearing 217 degrees 20 minutes 20 seconds 88' 2½" bounded thence on the South-west by a line bearing 293 degrees 31 minutes 40 seconds 148' 7¾" bounded thence on the West by a line bearing 0 degrees 9 minutes

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*St. James' Smithfield Variation of Trusts Vesting and  
Leasing Ordinance 1970*

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12' 0" bounded thence on the South by a line bearing 272 degrees 29 minutes 73' 7½" bounded again on the West by a line bearing 359 degrees 19 minutes 40 seconds 326' 2¼" to the Southern alignment of The Horsley Drive bounded thence on the North by the aforesaid alignment bearing 90 degrees 49 minutes 30 seconds 151' 8¼" to the point of commencement.

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

ATHOL RICHARDSON,  
Chairman of Committees.

I CERTIFY that this Ordinance was passed by the Standing Committee of the Synod of the Diocese of Sydney on the 20th day of July, 1970.

W. L. J. HUTCHISON,  
Secretary.

I ASSENT to this Ordinance.

MARCUS LOANE,  
Archbishop of Sydney.

20/7/1970.