

1929

Kenya

1

No. 15565

Part I

enclosure to 533/385

SUBJECT

Magadi Soda Co. Ltd.

1. Remission of Stamp Duties.
2. Company's rights as to sale.

Previous

15023/28

CLOSED
UNTIL

00533/385/15565/29

Subsequent

Part II

See 15727/29
(with concession)

Reviews circumstances under which claims for duties have arisen and submits for reasons indicated that they should be remitted either wholly or in part.

ack: D/7 & resp.

G. Eastwood

6.2.29

to Mr. Eastwood D/7 4/2/29

Mr. Bishe:

Mr. Eastwood and I are indebted to Mr. Seel for his help in preparing the attached note. May we have your observations, including the point at "A" at the end of the note.

The blunt fact appears to be that Brunner Mond & Co. ^{took} over Magadi in order to forestall a threat of what might have proved effective competition, and that they might even have preferred to lock up Magadi but for the clause in the ~~lease~~ ^{lease} requiring ^{the} deposits to be worked to the best economic capacity. The wider argument from the position of this company itself to the wealth of the Mond combination as a whole is therefore not without justification.

Para. 4 of enc. to 19 on X.15023/28.

Mr. Marriott, the Government Director, has offered to call 100 shares, if necessary.

A. H. Allen
7/2/29

So far as the English duties are concerned we have no power to do anything, and I should have thought the Company ought to address the Treasury. So far as the Kenya duties are concerned, I think we could once more forward the Company's representations to the Government. As regards the point referred to at A, nobody seems to have taken this and as it is not for us to raise such a point,

Reviews circumstances under which claims for duties have arisen and submits for reasons indicated that they should be remitted either wholly or in part. 2

ack. D/7 & reply

To Mr. Eastwood D/7 4/2/28

Mr. Bache:

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17/1/28

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RECORDED UNDER 112

In Mexico. See too letter
from W. Marshall, Post
Director on the board,
wh. I attach. I propose
to tell W. Marshall
by telephone tomorrow
what action we intend
to take. We will give
him a chance to protest
if he wishes.

Do you wish to see Marshall's
letter?

I agree that there is not the
slightest chance of getting the
Treasury to waive the law
in favor of an individual
company, even if they had known
to do so, which presumably they
have not.

E.G. 12.2.29

I have ring up W. Marshall & told
him the problem. He said
I'll see the situation & will
I'll see the situation & will
I'll see the situation & will
I'll see the situation & will

Now off as in my
absence of 11.2.29

llp

13.2.29

Opanda Soda Co. (McDonald)

DESTROYED UNDER STATUTE

Opanda Soda Co. 107
accounting receipt of 117 & a note attached

5. Letter, Opanda Soda Co. 107

to Oliver

Letter as to decision of Company to pay the Stamp Duty
as assessed by the Stamp Office which has been finally
assessed at £10, 54s - 12-0 a request for which is being
sent to Controller of Stamp. This report again shows
same as in stamp etc. & already for completion.

MS is satisfactory. It shows that
we are only a "try on" - the Company
but hope of success
of H13
A copy of MS go to the Gov 27

24.4.3

Grant

A. Allen

27/7

atance

To Gov 26 - copy 4 & 5. A/107 FEE 100

7. SHUTON, OLIVIER & OLIVER 4 APRIL 1929.
Reports that the leases & assignments of the old
leases have now been all completed & states as
to disposal of old title deeds and original leases
and assignments etc.

Copy of 7: 5/10 2/10

13. on 215015/25, a name that
when the documents appear to me

well if we forgot our idea of last
year. - but Th B. Stomberg might
wish to write privately to Th.
Marrist. (the Kenya Gov's Director)
on the lines of the official letter
then contemplated.

(The Salt ^{is} sold in. Thaulgodheren.
paid by the Masadi Coy. under
the 1924 Memorandum of Agreement)

Sheet
25 & 29

If, within the year 1929, we really
reach the end of Masadi,
Vic. Masadi & Nyali, we
can reckon this as a golden year.

Let you wish to write to
his honor? I agree that
an official letter is hardly
better.

all partners

I would rather not write - on 8/28
Marrist - all is one of the 5-10-15

Good - if then.

Partly Good 2.5.14.

at once

Mr. B. Stomberg

6

The attention has been called to what
appears to be the concession granted
by the Kenya Gov. in 1926 to a
local company for the manufacture
of salt: ^{in the area}, the concession
seems to confer upon the company
the sole right for a period of 20 years
to ^{manufacture and} export salt from Kenya.

Parcel of land
Office letter
of 11 May 1926.
although that
figure is not
clear - probably
some other in
company? all p

We have never heard anything of
this from the Kenya Gov., & it is only
by an accident that we have now
learned of the concession.

The really interesting point
which arises is in connection
with the Masadi soda concession.
The lease dated 20 March 1924
is tacked in the file.
Now supposing that at any time
the Masadi Company found that
they could so treat the soda
deposit as to convert it in
part into common salt
(sodium chloride), - they wd. have
a very valuable product, and
presumably if the salt were
obtainable in quantity they
wd. wish to export it. What
wd. then be the position?
See passage marked in
file 6 & 7 of the lease,

which would mean an agreement with
Company the right to produce
the salt & to carry it away -
i.e. out of the Colony, past
the Hill Soda.

Do you agree with this
interpretation? If so, what
would be the position legally
as between the Ganga Salt,
the M. S. & the
Himal Salt Coy.?

All-Parliament
12.5.28

[The fact that the Gov. had
conferred with the Magadi Coy.
prior to the grant of the
lease of 20 March 1928
would have a bearing on the
matter?]

accp

This fragment of correspondence is, of
course, very vague and indefinite. At the most
it can only be heads of an agreement for a lease
or concession. Whether a lease or concession
were ever, in fact, granted we do not know.
Even if they were not, it may be that Mr. Blain
or his assignees are entitled to a lease, or it
may be that there are other circumstances from
which it would be possible to say that the
rights have lapsed. If the concession is good,
and if the Magadi Soda Company can and do extract
common salt, the Ashya Government would

presumably

presumably be liable to Mr. Blain for such damages
as he could show he had sustained by reason of the
breach of clause 6.

H.B.H.
5.29.

W. B. H.
W. B. H.

Then we had better try to find out
by Fil. its actual position
as to the Salt concession?
I found an interim reply to
W. B. H.?

W. B. H. for course
[I have had copies of all
the original papers in
N^o 12 made. I need it
and be convenient for W. B. H.
to refer to the 2 of our copies
separately, in a file
headed "Salt Concession"
with a copy of the W. B. H.
document.]

attached to
copy of

- 13 20 O.A.S. tel. com. } 16 May
- 14 20 O.A.S. tel. copy

15 To the Marriott (for 19 and 20 tel. tel.) 190 N^o

except
obviously
to have
a name
activity?
need
→

agreement too seriously. He has done nothing in regard to it all this time. The Magadi Company will presumably not be producing salt for some little time, and the likelihood, when that arrives, of Blain being able to show that he has a valid monopoly and that he has suffered damage by the breach of it seems to be remote.

to Blain H/B

H/B 30.5.29.

I have drafted for review to
to Blain again a brief
discussing with his attorney -
he would be made quite
sure that you cover in the
draft. It is very odd
idea to add that
to Mr. Wright like another
fall - it seems to me
we might get an positive
clearance with him if he
did call upon. and
we would also make
a file (or disp) to
Honey, if you think it
desirable, advising them
to terminate the Blain
concession if they

Note. As to Magadi
Company's rights with
regard to salt, see
for mins. on 15/27/29.
on which future salt
will be taken.

Acceptance
30.5.29

No. 15727

It passed I fancy that
the Magadi prices will amount
to something in excess of 1000

W.C.S.
31.5.29

Tip to Marriott

Mr. Marriott interviewed See 15/27/29

No. 17 subject to any legal objection
? send substance of para 2 of (17)
to the Magadi Co. in continuation of (2).

Atlantic Salt
12/11/28

It is considered through Mr. Marriott
accepted by board of directors
W.C.S. 16.5.29
A. Marriott

To the Magadi Co. Ltd.

21 To Acting High Comm. Cairo 1929
20 June
Cont.
To the Sec. 500 - w/c copy 20 - A/c - 20/11/1929

Note. do to Magadi
Company rights with
regard to salt, see
for min. or 15727/ptg.
in which paper will
note to take
No. 15727

acknowledgment
30.5.29

It is passed. I fancy that
the Magadi prices will amount
to something, but I don't know.

L.C.S.
31.5.29

Ref to Hamoth

Mrs. Marriott interviewed - See 15/12/29

No. 17 Subject to ~~any~~ legal objections
? send substance of para 2 of (17)
to the Magadi Co. in continuation of (2)

A. H. H. H. H.
17/6/29

It is passed through the Board.
Approved by the Board.
L.C.S.
28/6/29

To the Magadi Soda Co.

21 To bring High Common Trans. Act. 28 June.

To Gov. 500 - w/ copy 20 - A/1 - 10/11/29

Magadi Soda Co. Ltd. 2 July 1929
Acknowledges receipt of No. 20 with thanks.
Further communication with it, if necessary, be sent later.
10
DESTROYED UNDER ORDER OF THE
10/11/29

No. 20 - passed by

A. H. H. H. H.
11/7/29

H. T. Ashworth
11/7/29
at once

No reply yet received to No. 21.

A. H. H. H. H.
14/7/29

To - Magadi Soda Co. 12 July 1929

Notwithstanding
this letter deals with railway rates
on soda ash & on oil fuel,
& the fact that proposed increases
in the rates on these commodities
shall be recommended. The Co. also
ask the intention of the Railway
Authority in regard to rates on coal.
There has been no reply so far
to our tel. to A.P.H.C. in No. (21),
but we must assume
that in any event the increases
made in oil fuel did not come
into effect 1 July.
We send better for this week

28. H. CR. TRANS TEL. No. 20. 27 July, 1929.
Company has been notified that public oil rate
will be charged immediately (from 1st July);
Railway is also preparing claim between rate
hitherto charged and rate authorized in agreement; 11
New rate for soda will not operate before 1st. Nov.

*Subject to any advice you may wish to
give Mr. A. in No. 20, Mr. Marriett
propose to send last substance of the
telegram to Mr. Marriett, the legal member
of Magellan in line of off. received
the Clause referred to in No. 20
Clause 10 & 11 of the Railway Lease (plugged
red) will you please pass this on to
Mr. Allen, with any advice as to the action
of the Railway department.*

Car. Clegg

It is true that the term of the lease
dates from the 1st November, 1924, as this is
expressly provided for in the lease. The suggestion,
however, that all the covenants operate from that
date is rather bewildering, as the lease is dated
the 20th March, 1928. It may be that the correspon-
dence shows that this was the intention, but I should
want to see rather more of it than one letter to
which I have been referred. Clause 10 at first
sight seems to refer back to Clause 4(iv), and to
make the rates provided for start in 1927. However,
clearly I think you must give Mr. Marriett the
substance of this telegram, and we will see what he
says. Possibly, he will accept it, in which case we
shall have saved a good deal of trouble.

*It might perhaps
be better to
say lease? Ass.
J.M.W.*

27.7.29

*The agreement we sent SCA
25th July is in any case the
best available in J.M.W.
then!*

*J.M.W.
30/7*

27.7.29.

*acc. J.M.W.
above*

Mr. [unclear] and
[unclear] draft 1-9

To Hamnett

2 AUG 1929

Mr. Hamnett called today at
[unclear] this and agreed
to have a tel. call on
the 7th. He is
glad that we did not
send a letter officially
to the Coy.

He will come about
the 16 August. Even if
there are any developments,
he will then be away
for about 3 weeks. I
suggest that we should hold
up his return any
fresh comm. that
may come in.

Mr. [unclear] will see on his
return.

Best
G. P. [unclear]
always

30 To H.C. Transport Tel 7 Aug '29.

Nothing up
needed - I said
that we had no
developments
[unclear]
17.14

Mr. [unclear]

Do you marginal notes to minutes
[unclear] of note

I do not know what any point
arises at this moment but Mr.
[unclear] would be asked to look at this
again to be sure that he has any
further news. I have discharged all
the pp. not referred to in the note

G. Seal
16.8.29

We are very much obliged

G. Seal

I don't know whether Mr.
Hamnett has taken the boat in
connection with this but I
can see what all something like
transfer - in the meantime
Circulation is by Stanley & Seal

J. Allen
16.8.29

See [unclear] 10.8.29
[unclear] 17.8.29

Yes seal

No seal

railway lease. Thereafter royalty will be charged as specified in the original clause 4 at the rate of 2s per ton on raw soda and 3s/- per ton on soda ash and other soda products.

(5) 5th clause of original indenture. This clause will be omitted as no longer necessary. The same applies to the last five lines of clause 7 of the original indenture.

(6) 9th clause of original indenture. This clause will be omitted.

(7) Clause 10 of original indenture. This clause will be reworded to provide that the lessees will work the deposits to the best economic capacity. The intention being that the best economic capacity means the best economic capacity of the new Company regarded as a separate entity, and without derogating from that general undertaking that in the 12 monthly periods corresponding roughly to the 3rd, 4th, and 5th years from the date of reconstruction they will work and despatch by railway at least 50,000 tons of raw soda or soda products, and in the 6th and every subsequent year 100,000 tons. A shortage not exceeding 10% in any one year may be made good in the first three months of the next year. The year for this purpose will end on such day and month not less than three years from the date of reconstruction of the Company as the Governor may fix, and thereafter on the same day and month annually. If for example the date fixed by the Governor is the 30th of September, and the date of reconstruction is the 1st of July 1924, the effect would be that the first "year" of the lease would end on the 30th of September 1925, the second year on the 30th of September 1926, and so on. The provision in the original clause 10 regarding

agreements

(a) that the freight on coal, oil fuel or any other upward traffic from Kilmarnock will be the same as that charged to the public. For example on coal the Company will pay the special imported contracts (at present it is understood to be 20/-), and on oil fuel consigned in their own wagons (of which they have a few) the same rate as is applicable to oil fuel consigned by other companies in their own wagons.

(b) that during the period of not less than five years following reconstruction (the exact date for the expiration of the five year period being fixed as in (7) on main lease) the freight (including royalty) on soda will, according to the weight carried in each twelve months, be as follows:-

- Not exceeding 50,000 tons - 18/- a ton.
- Exceeding 50,000 but not exceeding 150,000 tons - 17/- a ton.
(with a minimum of £45,000)
- Exceeding 150,000 tons - 16/6 a ton
(with a minimum of £127,500)

Provided that any odd months in excess of 60 months included in the first five yearly period as finally determined shall be added to the first period of 12 months and the rates charged for such odd months shall be the rates applicable to the first 12 months.

(c) that after the expiration of the first period of not less than five years from the date of reconstruction and for the next ensuing five years the rate of freight may on six months notice to the Company be increased to an extent considered reasonable after taking into consideration the cost of working the traffic at that time and/or the selling price of soda but the rates of freight (exclusive of royalty) will not in any case exceed the following:

- Not exceeding 50,000 tons - 22/- a ton.

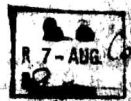
Exceeding

30 25

Mr. *Recd. Baltimore*

X. 15561729 *Henry*

- Mr. *Marling*
- Sir J. Shuckburgh
- Sir G. Grindle
- Sir C. Davis
- Sir S. Wilson
- Mr. Ormsby-Gore
- Lord Lovat
- Mr. Amery



~~GE~~
X E A

Code + search
1 p. on
7 Aug '29
4 p.

7 August confidential

[24] Your Tel. of 27 July 1929

DRAFT. Code: Fel.

*Highways
roads*

20 has been discussed
with Government
Director Magadi Company
~~He~~ is very much
disturbed at decisions
in regard to oil rate
which will be very
cause serious

~~Room F~~

setback to progress now
under way for large
increase in capital to
improve and extend
soda output from Kenya

I should be glad if you
would arrange for claims
for payment on basis
indicated in your telegram
not to be put in pending
receipt of my dip. No.

86 of 18 July and
reference to me after
consent of representatives
therein

Leah

(26)

set back to business with
widespread for large
increase in capital to
improve and extend
soda output from Kenya

I should be glad if you
would arrange for claims
for payment on basis
indicated in your telegram
not to be put in pending
receipt of very dip. No.

• 86 of 18 July and
reference to me after
consultation of representatives
therein

Secur

[26]

RECEIVED
29 JUL 1929
COL. OFFICE

28

TELEGRAM from the High Commissioner for Transport, Kenya-Uganda, to the Secretary of State for the Colonies.
(Dated 27th July Received Colonial Office 3.0.p.m. 27th July, 1929.)

No. 20. 27th July.

No. 21. Your telegram of 28th June Rate(s) for Magadi Soda Company. Completed copies of agreement with Magadi Soda Company have only recently become available here. As this agreement has effect from 1st November 1924 vide letter 4255/26 of 12th August 1926 from the Under Secretary of State to the ^{Kenya} Magadi Soda Company and as Clauses relating to soda rate have already been given effect to from that date railway administration is also arranging to give effect to all other clauses from the same date. Company have therefore been notified that public oil rate will be charged immediately (from 1st July) railway is also preparing claim for payment of difference between rate hitherto charged for oil and rate authorized in agreement. New rate for soda referred to in the General Manager's letter of 29th April will not operate before 1st November and the Company will before then be supplied with statement referred to in clauses 10 (c) (iv) of agreement and be given one month to decide whether it desires proposed increase referred to arbitration.

ho. 22 on X
A

29 Aug '29
30

C.O. 533 / 385
BE REPRODUCED PHOTOGRAPHICALLY
ONLY WITHOUT PERMISSION OF THE
PUBLIC RECORD OFFICE, LONDON

not be imposed, and
ask for info. as to the
intentions of the Railway
Administration in regard to
rates on coal.

(2) I have to request that you
will give careful attention
to the Coy's letter & that
you will furnish me
with your observations upon it
at your earliest convenience.

(3) In this connection I would
invite refer. to my tel. of
Apr 28 / 1941.

2

(Signed) PASTFIELD

[24]

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ask for info. as to the
intentions of the Railway
Administration in regard to
rates on coal.

(2) I have to request that you
will give careful consideration
to the Coy's letter & that
you will furnish me
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at your earliest convenience.

(3) In this connection I would
refer you to my Tel. of
the 28th June

2

(Signed) PASSFIELD

[24]

Mr. Acet 17.7.28

X. 155657 & Mysore 25

30

Mr. Bottomley 18.7.28

Sir E. Harding.

J. Shuckburgh

Sir G. Grindle.

Sir C. Davis.

Sir S. Wilson.

Mr. Ormsby-Gore.

Lord Lovat.

Mr. Amery. 2 1/2 weeks

Cb.
18 July 1928

DRAFT.

The Sec.
The Mysore Soda Coy Ltd.

Hi.
I am etc. to ask the
acc. of the 2nd of the
12th July relation to
~~existing~~ rates upon
Soda ash, fuel
and coal
oil & on the Mysore
Apprentice Railway,
and to inform you
that a copy of the

letter has been referred
to Acting High Commissioner
for Transport, Kerala &
upwards, for action.

(2) A further letter will
be sent to you when a
reply is received from
the Acting High Commissioner.

2

Signed A. C. C. PARKINSON

Letter has been referred
to Acting High Commissioner
for Transport, Kerala &
Uparda, for action.

(2) A written letter will
be sent to you when a
reply is received from
the Acting High Commissioner.

2

(Signed) A. C. C. PARKINSON

The Under Secretary of State.

12th July 1929.

charge of 6s/- per ton on Soda Ash, and, as we shall show below, they constitute so serious a threat to the progress of the Company that we find ourselves compelled at once to press for their complete remission.

Under the terms of the Lake Lease, the Company becomes liable for a royalty of 3s/- per ton on manufactured soda, as from the 1st November next. It is the Company's intention to meet this liability when it falls due, but we regard the additional charges imposed by the increase in railage rates as quite unjustified at this stage, and the reasons for our submission are as under.

The production for the years 1927 and 1928 amounted to 59,822 tons and 72,740 tons respectively, an average of 66,281 tons. Our experience in marketing the grade of Soda Ash now produced from the Lake deposit, has shown conclusively that the maximum quantity which can be absorbed in world markets at the present time is about 65,000 tons annually. This is an average figure and may of course fluctuate in sympathy with trade conditions from year to year.

This limitation arises from two sources. Firstly, because the cost of sea freights from Kenya Colony to Europe and the U.S.A. excludes those markets, which are already close to sources of supplies of Soda Ash manufactured by the Ammonia-Soda

32

The Under Secretary of State.

12th July 1928

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... of State.

12th July 192

process. Magadi markets are thus confined to S.America, S.Africa, India, Australia and the Far East.

Secondly, because the quality of Magadi Ash is so far inferior to Ammonia-Soda Ash, that it can only be used for the manufacture of products of inferior grade. For instance while it can be, and is, used largely for making amber glass bottles, it is quite useless for white glass. Thus the scope for its uses definitely limited.

Now at present costs and sale prices the gross trade profit on an annual output of 65,000 tons would be about 25s/- per ton, giving a total of £1,250 out of which the following allocations have to be met before there is any profit left for the preferred ordinary and ordinary shares:-

Debenture Interest	£30,000	per annum
1st & 2nd Pref. Dividend	<u>£33,000</u>	" "
Total	<u>£63,000</u>	" "

This leaves a balance of £18,000 odd, before making any allowance for Debenture redemption (£19,000 per annum from 1929 to 1945 inclusive) or any provision for contingencies or reserves other than obsolescence.

The payment of a royalty of 3s/- per ton will reduce this balance by £9750 annually, while the effect of the increas

The Under Secretary of State.

12th July 1929

the rates of a further 6s/- per ton, will be to wipe it out altogether and leave a substantial deficit in its place.

The data upon which above figures are based can be verified at any time by reference to the accounts of the Company.

Having now shown the disastrous effect upon the Company's profit-earning capacity of the proposed increase in railrage rates, we beg to be allowed to submit some other considerations in connection with the increases individually.

Soda Ash. * The increase notified by the Kenya Uganda Railway is the maximum rate permitted under Clause 10 (c) of the Railway Lease for the period 1.11.29 to 31.10.39, but there are certain conditions governing the imposition of any increase set out in Clause 10 (c) paragraph (ii) to (viii). In brief these are as follows:-

- (a) 6 months' notice must be given.
- (b) notice shall only be given if it is considered reasonable having regard to cost of working the traffic and the selling price of Soda Ash.
- (c) the Railway must submit a statement of cost of working the traffic during the preceding 6 months
- (d) the Company may claim arbitration and in such arbitration regard shall be paid to the cost of working the traffic and whether the selling price of Soda Ash permits such an increase.

The Under Secretary of State.

12th July 1929.

Fuel Oil. In this case the Company is covered by no working agreement with the Railway, and the question of the rate to be charged remains entirely at the latter's discretion. At the same time the fuel oil rate is so intimately bound up with question of costs and thus of the Company's obligations under its leases, that any resistance to an increase on these grounds can be fully justified.

The points advanced in connection with the Soda Ash rate, apply with equal force to the Fuel Rate. In addition it must be borne in mind that in this instance the Company provides its own rolling stock - Railway owned oil tank bogies only being used when the Company's own wagons are undergoing repairs. On this score alone, therefore, the Company is entitled to a special rate.

There is now a further matter to be taken into account which is of even greater importance than the foregoing. It was stated above that owing to the limitations imposed by market conditions, 65,000 tons per annum is about the maximum quantity of the present product which it is possible to sell. This being so, what is to happen when an output of 100,000 tons per annum, as stipulated in the Lake lease, becomes obligatory on the Company?

The Under Secretary of State.

12th July 1929.

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The Under Secretary of State.

12th July 1929.

The only solution of this difficulty is to manufacture a product sufficiently pure to take its place in the market on an equal footing with the very best quality Soda Ash manufactured elsewhere. It is therefore upon the discovery of an economically workable proposition for making pure Soda Ash, that the energies of our management have been concentrated for the past two years.

These investigations have been so far successful as to indicate a process sufficiently attractive to try out on a semi-large scale experimental plant. This plant is now in course of erection and will cost about £7,000 to complete. If the results which it yields come up to expectations, the next step to be considered will be the erection of a full scale unit at Lake Magadi capable of turning out 300 tons per day. It is not yet known exactly what this will cost, but preliminary estimates indicate a figure of some £250,000, while a good deal of the existing plant will have to be scrapped.

It is obvious therefore that so long as any uncertainty prevails as to the intentions of the Kenya Uganda Railway with regard to railage rates on Soda and Fuel, the Company will feel considerable reluctance in committing itself to further capital outlay of this magnitude, and the consequences of such a check

The Under Secretary of State.

12th July 1929.

would be difficult to increase.

Meanwhile the first effect of an increase in the oil rate can only be to hasten the abandonment of oil in favour of coal, the railway tariff rate for which is only 20s/- per ton. The main objection to the adoption of coal straight away is that it would involve further capital expenditure on the present plant, but it is probable that in any new plant, coal will be the fuel provided for. Here again, however, the element of uncertainty prevails, because just as in the case of fuel oil, the Company has no guarantee that the Kenya Uganda Railway will not increase the tariff rate on coal, at a moment's notice. The railway are just as much at liberty to do this as they are to increase rates on fuel oil.

Our submission in brief then is as follows:-

- (a) We recognise our obligation to pay royalties as from the 1st November next and this will be duly met.
- (b) The present selling prices of Soda Ash offer no justification for an increase in railrage rates from the Lake to Mombasa.
- (c) The proposed increase in fuel oil rate is equally unjustifiable and the imposition of either or both will be a serious handicap to the Company both under present conditions and having regard to future developments.

The Under Secretary of State.

12th July 1939.

- (d) We therefore claim that both these increases should be rescinded, the Soda Ash rate for reconsideration at the end of the next five yearly period (October 1st 1934) and the oil rate indefinitely.
- (e) We should also appreciate a declaration by the Kenya Uganda Railway as to their intentions with regard to rates on coal, in view of the important bearing of this question upon future development.

Should there be any further information which you may require we shall be only too pleased to furnish it and meanwhile we take the opportunity of thanking you for your kind consideration of the points enumerated above.

Yours faithfully,
For THE MASABI SODA COMPANY, LTD.

A. E. Dewitt

(A. E. Dewitt) SECRETARY.

soda rate has statement
of cost of working
been given under clause
10 (5) of lease to local
manager? It is important
that Company should have
full period of one month
in which to decide
on its abolition

5/6/52

7 JUN 1952
15 JUN 1952

- Mr. Hamble J. 24/6
- Mr. Buse 28/6
- Mr. Parkinson 27/6
- Mr. Bottomley
- Sir E. Harding
- Sir J. Shuckburgh
- Sir G. Grindle
- Sir C. Davis
- Sir S. Wilson
- Mr. Ormsby-Gore
- Lord Lonsdale
- Mr. Amery

Handwritten signature
Ackd. W. 23

(No. 2)
(M. 17)

DRAFT. For consent:

The Magadi Soda Company, Ltd.

Cm No. 500. Pt. 4 JLT 1952

Copy to be
inf of inf (17)
2/4/52

Continuation of a
letter of the 14th February from this
dept. I am etc. etc. inf. you
that a dept. has now been
received from the O.A.G. of Kenya
in regard to
~~which the dept. has in the~~
payable
of the dept. duties
by your Company in Kenya
on the lease, and
~~copies of the~~
other documents
connected with the
with this transaction of the
transfer of the property
of the dept. in question
of the former
should be

~~The circumstances to request~~

~~that you comply with now~~

~~applicable to the situation of the~~

~~new plan~~

~~to be done~~

Megate Soda Company.

(2) The matter has
been carefully considered,
but the Col. Govt. cannot
in this way to
agree to the remission
of the duties.

~~The circumstances to require~~

~~the firm company with view~~

~~to the a~~

~~and other~~

~~to do~~

Mepadi Soda Company.

(2) The matter has been carefully considered, but the Col. Govt cannot in this way to agree to the remission of the duties.

X. 15565/29 Kenya 42

Mr. Allard 301574

Mr. Boushel 31

Mr. Boltonley 31.5.29

D Sir E. Harding

Sir J. Shackburgh

Sir G. Grindale

Sir C. Davis

Sir S. Wilson

Mr. Ormsby-Gore

Lord Lovat

Mr. Amery

Confer

Copy attached to 1572/29 Kenya (Salt concession)

In Mr. Boltonley's opinion

2/29

3/6

4 JUN 1929

CO

1929

DRAFT.

H. F. Marriott, Esq

M. West. M. M. C. I.

[15]

Dear Marriott.

You will remember that I sent you a note in the 16 May about an alleged salt concession in Kenya. We have now had a telegram from the O.A.P., which had to be ref. ~~made~~ made, as we were without info on the subject.

The O.A.P. state that no salt concession has been granted or

promised to any local company
or to any person other than
Mr. W. Blain, to whom the letter of the ~~11th~~
11 May 1926
from the Commissioner for Lands
in Nairobi was ~~addressed~~

through "other local services
organisations" have recently been
made. He goes on to say that
the concession granted to Mr.
Blain has received no documentary
form other than the letter.

It is to be just mentioned,
pending selection of an area
that ~~the~~ ^{the} concession will
expire on the 6th Dec. 1929
unless prior to that date
poland is installed as
required by condition No. 5
in the letter.

~~but engaged at the 1st~~

~~and to the 1st~~

As regards the monopoly
done in Mr. Blain's concession,

Mr.
Mr.
Mr.
Mr. Bottomley
Sir E. Harding
Sir J. Shuckburgh
Sir G. Grindle
Sir C. Davis
Sir S. Wilson
Mr. Ormsby-Gere
Lora Lovell
Mr. Amos

DRAFT

the only point is that 43
that only binds the Govt.
not to grant any other
salt concession for a
specified period; & he is
advised that if the
Ingepadi Soda Company
should find it possible to
produce salt from the
Soda Schicht, they would
not be precluded from so
doing by the clause in
question, as ^{it} ~~is~~ ^{must} indeed
be the case, seeing that
the existence of the
concession could not
preclude the Ingepadi
Soda Company from
doing anything which
they have a right to
do under their license.

I shall be glad to
see you again, & you
~~will~~ would like to
have a further talk

about this at any time, and
your secretary

if you can't find the

~~P.S. I have no objection to your~~
showing this letter to the
other directors of the
Wepesi Soda Company
if you wish to do so.
it ^{would} be better if we
had a talk first.

Yours sincerely

W. C. DODD TOMLEY

[L. H. M. only
will write to
this unless there
is any thing
new to the
company.]
/ end

I think it is better
if he saw us first.
The letter alone may
give an erroneous
impression.
H. B.

about this at my time, and
your ~~secretary~~

to the collection of

~~P.S. I have no objection to your~~
showing this letter to the
other directors of the
Maple Soda Company
~~if you wish to do so.~~
it ^{would} ~~might~~ be better if you
had a talk first.

Yours sincerely

(Signed) W. C. DOT TOMLEY

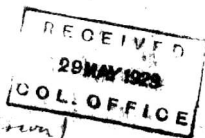
[L. W. M. only
and wants to buy
this, unless there
is any strong
reason to the
contrary.]

/ well

I think it will be better
if he saw us first.
The letter above may
give an erroneous
impression.
HLS

Copy Regd. 15727/24

(Salt Concession)



18

44

TELEGRAM from the O.A.G. of Kenya to the Secretary of State for the Colonies.

(Dated 28th May Received Colonial Office 3.12.p.m. 28th May 1929).

No. 150. 28th May. Confidential.

Your telegram of 15th May. Salt Concessions. No salt concession has been granted or promised to any local company or to any person other than Blain though other local serious enquiries have recently been made. Concession granted to Blain has received no documentary forms other than Land Office letter of 12th May, 1926 pending selection of area. Blain's concession expires on the 5th December unless prior to that date plant is installed see condition 3 in Land Office letter. I am advised that salt production by Magadi Soda Company from soda deposit would not be precluded under monopoly granted to Blain which only binds the Government not to grant any other salt concessions for specified period.

17
45



KENYA

No. 267

GOVERNMENT HOUSE,

NAIROBI,

KENYA

6 May, 1929.

RECEIVED
27 MAY 1929
COL. OFFICE

Sir,

With reference to your despatch No. 120 of the 20th February last on the subject of stamp duties due from the Masadi Soda Company Ltd. on the leases and other documents executed in March 1928, I have the honor to inform you that the situation in this matter has been resolved.

I have sought the advice of the Council on this matter and received their unanimous opinion that the stamp duty in question should not be remitted. In these circumstances I shall be glad if the Company may now be asked to expedite the execution of the new titles.

I have the honor to be,

Sir,

Your most obedient, humble servant,

ACTING GOVERNOR.

THE RT. HON.

LIEUT. COLONEL L.C.M.S. ALERY, P.C., M.P.,

SECRETARY OF STATE FOR THE COLONIES,

DOWLING STREET

LONDON, S.W.

Mr. Bottomley said he had no information in regard to (a), but he pointed out that anyone taking up a business proposition and relying upon an existing protective duty would naturally wish that the duty should be maintained; but that in all such cases there was ^{obviously the risk} ~~clearly the risk~~ that the Government might find it necessary to remove or modify the duty.

As regards the question of Royalty: This ^{is} ~~is~~ a matter ~~which~~ for consideration by the Colonial Government.

Colonel Feilding said that Mr. C.S. Goldman, who was now in Kenya on other business, was in telegraphic communication with himself in regard to this salt concession; but when Mr. Goldman left London the question of the protective duties had not come to notice.

After some discussion, Mr. Bottomley advised Colonel Feilding to telegraph to Mr. Goldman again, and suggest that he should take up this and any other matters direct with the local Government. In reply to ^{an} the enquiry as to the person with whom Mr. Goldman should negotiate, Mr. Bottomley said that he assumed that it would be Mr. Martin as being Commissioner for Lands.

Mr. Hobley expressed some surprise that the Colonial Office had not received from the Government of Kenya information in regard to the salt concession which had been granted; he had assumed that the matter would have been referred to the Secretary of State.

Mr. Bottomley explained that, while no doubt this procedure would have been followed in the days when Mr. Hobbly was in Kenya, the Kenya Government now did not refer so much to the Secretary of State, especially matters which they regarded as being of comparatively small importance.

In the course of the conversation, Colonel Feilding remarked that the competition which the Kenya Company might expect would come from Port Sudan and Aden. He made no reference to other possible source of competition, but whether he had anything in mind or not is not certain.

Recd P

15/1/41

I have heard from Mr. Hobbly at
 the S.I.P. that he has written
 Robert with the intention of
 reporting on the matter.

Table sold - 20% actual

Sold same table

not elsewhere
 specified

if you 100 lbs.

Sold for various purposes

and agricultural purposes

Lieutenant-Colonel R.C. Feilding, - whose card gives his address as the Guards' Club, - called yesterday by appointment to see Mr. Bottomley about a salt concession in Kenya. He brought with him Mr. C.F. Hobley, some time Provincial Commissioner in Kenya, who has been advising Colonel Feilding and his friends in regard to this concession.

Mr. Bottomley said at once that we had heard of a salt concession having been granted by the Government of Kenya, but that we had heard nothing whatsoever about it from the Government of Kenya itself, and we knew little about it. Mr. Hobley said that the concession had been granted about a year ago to a Commander Thompson, an American, and that the area in which the concession was held was at Kiunga in the neighbourhood of Lamu.

Apparently the present owners of the concession wished to dispose of it, and Colonel Feilding and his friends are thinking of acquiring it; but Colonel Feilding is anxious to obtain information on two points:

(a) He understood from the Trade & Information Office that the protective duty which had been imposed on salt in Kenya had now been modified, and he wished to be assured that if he and his friends took over the concession they would have some guarantee that protective duties, which were of course of much importance to them, would not be removed.

(b) The royalty provided for in the concession was very high, and he wondered whether some arrangement might not be made with the Government of Kenya whereby the Government would share profits with the Company and the royalty would be reduced.

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Mr. *Alced 14.5.29*
 X Mr. *Burke*
 X Mr. *Bottomley 15.5.29*
 Sir E. Harding
 Sir J. Shuckburgh
 Sir G. Grindle
 Sir C. Davis
 Sir S. Wilson
 Mr. Ormsby-Gore
 Lord Lovat
 Mr. Amery

15565729 Kenya 15.49
 In the *Wattley's* application

REMA
 16

CO
 16 May 1929.

Dear Maundt,

I am returning the
 papers which you kindly
 sent me in your letter of the
 10th May, about a
 salt concession in Kenya.

I have verified that
 we have no info here
 as to this concession,
 & we are therefore
 asking the dep. of
 Kenya by telegraph
 for advice as to how

DRAFT.

H. F. Marriott, Esq.
 M. Inst. M. H. etc.

(in original)
 as enclosed
 in N. 212.

15365729 Kenya 14
50

Mr. *all 15.8.29*

Mr.

Mr.

Mr. Bottomley *15/8/29*

Sir E. Harding

Sir J. Shuckburgh

Sir G. Grindle

Sir C. Davis

Sir S. Wilson

Mr. Ormsby-Gore

Lord Lovat

Mr. Amery *2/15*

*Conrad Grant
11.35 a.m. 16/8/29*

AG

16th May Confidential

*my file of today
salt concession*

DRAFT. *Conf Code Ref.*

*Governor
Nairobi*

*I am advised that
if Inyanga Soda
Company were to
find it possible
to produce salt
by treatment of
soda deposit
they would have
the right under
lease of 20th
March 1928
to do so etc*

Mr. Acland 14.5.89
Mr. Broun 15
Mr.

Mr. Bottomley 15

Sir E. Harding

Sir J. Shuckburgh

Sir G. Grinter

Sir C. Davy

Sir S. Wotton

Mr. Ormsby-Gore

Lord Lonsdale

Mr. Amey

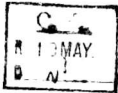
3 Mr. Gwynne

~~Private~~
Annex to 18
F
X

Order sent 11.35 a.m. 11/11/89

1556/29 Kenya

13
51



DRAFT.

Basic Act.

Governor
Maitland

16th May should be glad
to learn by telegraph

whether Govt. of Kenya
have granted salt
concession to a
local company etc.

Land office
11 May 1926 to BLAIN

if so to whom
concession granted

and

and date of grant
and brief resume of
conditions of monopoly
granted as ~~contemplated~~ in
Land Office letter what
provisions are bearing of
the clause

~~Land~~

If the concession is ~~not~~ (contd)
is due an agreement by the
State such a concession which is
still in force)

See

and date of grant
and brief resume of
conditions of monopoly
granted as ~~indicated~~^{contemplated} in
Land Office letter what
precisely are terms of
this clause

~~See~~
If concession was ~~made~~ ^{granted}
is this an agreement by ~~the~~ ^{the} ~~govt~~ ^{govt}
that such a concession ~~which~~ ^{which} is
still in force)

See

High B. Morrison, 11, Broad Street Place, London, E.C.2.
Consulting Engineer

12

TELEPHONE CENTRAL 0530.
TELEGRAMS OYMARI LONDON.

1, BROAD STREET PLACE.
(Finchley Circus) LONDON, E.C.2.

10th May 1929.

Dear Bottomley,

Herewith my personal copy of the information regarding the Kenya Salt Concession (pages 1 - 15).

Pages 1 - 11 deal with the commercial side of the business, pages 12 - 15 deal with the application for a salt concession by W. Blain of Nairobi, and the terms under which it will be granted signed by C.B. Mortimer for the Commissioner of Lands dated 11.5.26 and the date of the commencement of the accepted concession as 6.12.26 signed by H.R. Harris, A.L.O. dated 26.7.27.

Please let me have these papers back again when you have extracted the information you require.

As I explained to you the fact that this salt concession is now being hawked about in the market and is at present presumably still under offer to me makes the matter rather urgent as I would not like to let any

Handwritten note on left margin:
11, Broad Street Place, London, E.C.2.

Hugh B. Hurvill, *Consulting Engineer*

TELEPHONE CENTRAL 0530.
TELEGRAMS OYMARI LONDON.

12
1. BROAD STREET PLACE.
(Tinsbury Circus) LONDON, E.C.2.

10th May 1929.

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Handwritten note: *see list*

Copy.

KENYA SALT CONCESSION.

Summary.

Concession. Sole concession by Kenya Government for twenty years to produce solar salt against royalty of 2/- 10/- per ton, renewable for another ten years on same terms and a further thirty years on revised terms. (N.B. The present customs duty on imported salt is 22/0 per ton. The Kenya and Uganda Railway has promised special rates on 100% of salt, and freight from works to Mombasa will be less than from ports farther north. The concession is therefore virtually a salt monopoly for Kenya and Uganda.)

Financial Scheme. Registration of a Kenya Company with a capital of £50,000 (1,000,000 shillings) divided into 100,000 Cumulative Preference Shares and 125,000 Ordinary Shares. Preference Shares payable 5% on £100,000, 5% on allotment, and balance as required. According to estimates not more than £10,000 cash is required.

Preference shareholders receive 10,000 nominal ordinary shares as bonus, and thus have 50% of entire capital.

Holders of concession receive 125,000 nominal, fully paid ordinary shares, for all of their rights and to cover all expenditures heretofore made, no cash. Profits are divisible as follows:-

1.

C.O. 523 / 385
 JAN 1 1954
 U.S. DEPARTMENT OF STATE

1. Preference shareholders receive 8% cumulative
2. Remaining profits then divisible equally between holders of the preference and ordinary shares.

Example. Total Net Profits, £10,000 £10,000

- | | | | |
|----|---|--|---------|
| 1. | To financial group | | |
| | a. AS holders of £15,000 Pref. shares | | 1,200 |
| | b. Half of remaining £8,800 | | 4,400 |
| | c. AS holders of £10,000 bonus ord. shares (two-fifths of £4,400) | | 2,760 |
| | Total | | £ 7,360 |
| 2. | To Concessionaire group (three-fifths of) | | 2,640 |

In other words the financial group would receive 73.6% of the entire profits, and assuming that only £8,000 were paid up, a return of over 90% on the investment, and this under circumstances where the Company itself has only made a profit of 20% on its total nominal capital.

Estimated Profits. For details see annexes.

Present importation is about 8000 tons, and is estimated to reach 10,000 by 1929. Taking 10,000 tons as basis of calculation and present prices of coarse salt at Mombassa 85/- per ton and at Nairobi 200/- per ton. The cost of Aden coarse salt at Mombassa is 62/6 per ton, plus 22/5 customs duty.

10,000 tons imported salt free Nairobi		
now cost.	shillings	1,367,400

Estimated cost of local salt with railway rates unchanged		
		902,400

Difference in favour of local salt		
	shillings	464,000

If railway rates reduced as proposed, difference would be		
	shillings	777,400

Cost of Production. The cost of production on basis of 14,310 tons is 6/- per ton. With all management

and

C.O. 533 / 385

BE REPRODUCED PHOTOGRAPHICALLY WITHOUT PERMISSION OF THE PUBLIC RECORD OFFICE, LONDON

and other costs added, and even if railway rates
unchanged it would be possible to sell coarse salt
at Nairobi at one-half its present price. i.e. at
100/- per ton and still have a net profit of 150,078
shillings.

Authority to deal. The undersigned has sole authority
to negotiate on behalf of the owners of the concession.

(Signed) C.H.HUBERICH.

408 Salisbury House, E.C.2.

27th September 1928.

It has been noticed that salt is not recovered from the crystallising pans when the brine has reached 30° B.

The liquor remaining after the recovery of the salt is known as "Mother Liquor" or "Bittern".

The following analysis made on a sample of salt from the Aden salt works will give a clear idea of the chemical contents:-

Magnesium Chloride	14.300%
Sodium Sulphate	7.055%
Sodium Chloride	5.472%
Calcium "	2.708%

Total estimated 29.535%

Total Solids 29.568%
Specific gravity 1.27

The following is analysis of brine at 25 B. taken from pans at Aden salt works:-

	Parts per 1,000
Sodium Chloride	299.490
Magnesium Chloride	33.241
Lithium	0.058
Potassium	0.322
Sodium Bromide	4.819
Sodium Carbonate	0.124
Calcium Sulphate	1.804
Magnesium	15.832

Total solids 354.770

Besides the minerals shewn in the foregoing analysis several others are found in very small quantities.

The most important substances that could be recovered to an advantage are Potassium salts, Magnesium Chloride, Sodium Bromide and Calcium Bromide.

A Potash fertiliser called "Marine Kainit" and containing about 1% Potash, is being produced in Spain from the Mother liquor resulting from the manufacture of sea salt. After a preliminary evaporation of the liquors to remove a part of the

salts

salts the residual liquor is evaporated to dryness. This product is said to be superior in many respects to the ordinary "Kainit" particularly on account of its hygroscopic properties.

At the works of "Giraud" in France, Magnesium and Potassium chlorides are produced.

The Potassium chloride found in the form of "Carnallite" is utilised in agriculture whilst a part of it is manufactured in "Salindres" into Potassium chlorate.

The Bromides are very often extracted from sea water for the preparation of Bromine.

Usiglio found 1.48 parts of Sodium Bromide in 100 parts of Mediterranean salts.

Ten analyses by von Bibra from different seas gave 1.48 to 1.50 Sodium Bromide in 100 parts.

Magnesium chloride is also recovered in large quantities from the Bitterns of Solar salt production.

At Khasagnora (India) a plant is in operation for the recovery of Magnesium from the brine. This Magnesium chloride has largely replaced the imported article formerly used in large quantities by the mills in Bombay.

Common salt is the chief material of the heavy chemicals necessary for the preparation of dyes and their immediate products. It is the starting substance in Alkali manufacture.

5. Development. The lessee to undertake to install within 3 years a plant capable of producing salt equal to quantity of the present impregnation, probably about 50,000 tons.
6. Monopoly. In order to foster the industry in its initial stages Government undertakes not to grant any other salt concession to any other person or persons for a period of 20 years from the commencement of the term of the 5000 tons whichever is the earlier, provided that no objection shall be taken to the continuance of 2 small existing concessions over areas not exceeding 10 acres.
7. The land to be used exclusively for the manufacture, storage, and sale of salt and for the works and purposes connected therewith.
8. Lessee to have liberty to search, dig, bore, sink for work, get, manufacture, carry away and dispose of the demised rock salt and brine and produce thereof.
9. Residence of employees only to be permitted on the smaller area subject to the approval of the Deputy Director of Sanitary Services.
10. The Commissioner of Lands or such other officer as he may appoint to have the right of inspecting the works and books.
11. The quality of the salt manufactured to be subject to the approval of the Deputy Director of Sanitary Services on the basis of reports by the Government Analyst.
12. Lessee covenants to work, get and make merchantable the demised rock salt and brine in an effectual skilful and workmanlike manner without voluntary intermission and without unnecessary waste thereof.
13. Substantial cessation of operations for a period of 12 months to be deemed abandonment of area unless due cause shown to the satisfaction of the Governor.
14. The Lessee to take active and effective steps continually to prevent the breeding of mosquitoes on or near their field of operations.

C.O. 533 / 385

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15. The Lessee to fence off from adjoining lands all pits, shafts, reservoirs and other works (and any railway wharf to be constructed).
16. At all times natives in the locality of the concession areas shall have the free right to take away for their own use and not for sale or barter any brine or salt in its natural state without let or hindrance at such point or points as may be agreed upon to the satisfaction of the District Commissioner.
17. The Lessee shall not interfere with the rights of the public over the foreshore included in the lease and the Lessee covenants with His Majesty that he the Lessee will at all times during the extension thereof keep His Majesty indemnified against all actions, claims, demands and expenses in respect of any injury over the said foreshore and occasioned by the operations of the lessee under the lease.
18. The Lessee generally to indemnify Government against any claims arising from any accident, loss, or damage sustained by any person or persons occasioned by the operations of the Lessee under the lease.
19. Government shall not be responsible for any adverse effect caused by any constructional work which may be undertaken in the neighbourhood of the land leased.
20. The Lessee not to assign, sublet, or otherwise part with the possession of the demised premises or any part thereof without the previous consent of the Governor in writing.
21. The usual powers of distress and re-entry as provided in the Crown Lands Ordinance, 1915, to be reserved to Government.
22. Government to have the option of purchasing the machinery and plant upon the demised premises at the expiration or sooner determination of the terms of lease.
23. The Lessee to render to the Commissioner of Lands half yearly accounts and plans.
24. All other mineral rights reserved to Government as provided in Crown Lands Ordinance 1915.

15. The Lessee to fence off from adjoining lands all pits, shafts, reservoirs and other works (and any railway wharf to be constructed).
16. At all times natives in the locality of the concession areas shall have the free right to take away for their own use and not for sale or barter any brine or salt in its natural state without let or hindrance at such point or points as may be agreed upon to the satisfaction of the District Commissioner.
17. The Lessee shall not interfere with the rights of the public over the foreshore included in the lease and the Lessee covenants with His Majesty that he the Lessee will at all times during the extension thereof keep His Majesty indemnified against all actions, claims, demands and expenses in respect of any injury over the said foreshore and occasioned by the operations of the lessee under the lease.
18. The Lessee generally to indemnify Government against any claims arising from any accident, loss, or damage sustained by any person or persons occasioned by the operations of the Lessee under the lease.
19. Government shall not be responsible for any adverse effect caused by any constructional work which may be undertaken in the neighbourhood of the land leased.
20. The Lessee not to assign, sublet, or otherwise part with the possession of the demised premises or any part thereof without the previous consent of the Governor in writing.
21. The usual powers of distress and re-entry as provided in the Crown Lands Ordinance, 1915, to be reserved to Government.
22. Government to have the option of purchasing the machinery and Plant upon the demised premises at the expiration or sooner determination of the terms of lease.
23. The Lessee to render to the Commissioner of Lands half yearly accounts and plans.
24. All other mineral rights reserved to Government as provided in Crown Lands Ordinance 1915.

- 25. General provisions except as herein otherwise provided to be governed by the Crown Lands Ordinance 1915.
- 26. Such wharfage and transportation facilities as may be required to be the subject of special application by the Lessee; such application to be sympathetically considered by the Government.
- 27. This offer will remain open for your acceptance for a term of 4 months from date and the term of the Concession will be deemed to have commenced three months from date of acceptance.
- 28. For your conveyance this letter is forwarded in triplicate.

I am, Sir,

Your obedient servant,

sgd. C. B. Mortimer.

for Commissioner of Lands.

M. Blain, Esq.,
Nairobi.

U/H

Date of concession as per para. 2. of Memo 6, 1914.
Concession operates and rent due from Dec. 1, 1916.

sgd. H. R. B. ...

A. T. O.

20.11.16.

1556724
171



ALL COMMUNICATIONS
TO BE ADDRESSED TO THE
CROWN AGENTS FOR THE COLONIES
THE FOLLOWING REFERENCE AND THE
DATE OF THIS LETTER BEING QUOTED

4, MILLBANK,
WESTMINSTER,
LONDON, S.W.1.

O/Kenya 31a

TELEGRAMS: "CROWN, LONDON."
TELEPHONE: 7730 VICTORIA.

RECEIVED
11 APR 1929
COL. OFFICE

10th April, 1929.

Sir,

With reference to your letter No. 15023/28^{No. 7}
of the 17th March, 1928, and to subsequent correspondence
respecting the execution of certain documents relating to
the Magadi Soda Company's property in Kenya, I have the
honour to transmit a copy of a letter which we have now
received from Messrs. Sutton, Omsanney & Oliver, reporting
the completion of the matter.

4. 4. 29.

U. S. C.

2. I also forward, under separate cover, twenty
printed copies of each of the Leases and Surrenders dated
20th March, 1928. Twenty prints of each of these documents
are also being forwarded to the Government of Kenya, as
requested, together with the originals of them and the old
title deeds specified in paragraph 1 of Messrs. Sutton,
Omsanney & Oliver's letter.

I have the honour to be,

Sir,

Your obedient servant,

W. A. Wickham
for Crown Agents.

The Under Secretary of State,
COLONIAL OFFICE.

Kenya 31a.

MESSRS. SUTTON, OMMANNEY & OLIVER TO THE CROWN AGENTS.

3 & 4, Great Winchester Street,
London, E.C.2.

4th April, 1929.

Gentlemen,

Mogadi Soda Company Limited

With further reference to your letter of 20th March, 1928, we have pleasure to report that the new Leases and Surrenders of the old Leases have now been completed and stamped.

1. We beg to hand you the old title deeds of the property in Kenya viz:-

- | | |
|------------------------|----------------------------|
| (1) 12th April 1911 | Lake Lease |
| (2) 13th April 1911 | Railway Contract |
| (3) 16th May 1919 | Duplicate Trust Deed |
| (4) 22nd October 1919 | Kilindini Lease |
| (5) 22nd October 1919 | Kajiado Lease |
| (6) 6th April 1924 | Office Copy Order of Court |
| (7) 20th December 1924 | Office Copy Order of Court |

2. A cheque for £322. 15. 6. being the sum referred to in clause 4 of the Port Lease.

3. Three original Leases and Surrenders as follows:-

- Lake Lease
- Railway Lease
- Port Lease
- Surrender of Lake and Railway Leases
- Surrender of Kilindini Lease
- Surrender of Kajiado Lease

all dated the 20th March, 1928.

Kenya 31a.

MESSRS. SUTTON, OMMANNEY & OLIVER TO THE CROWN AGENTS.

3 & 4, Great Winchester Street,
London, E.C.2.

4th April, 1929.

Gentlemen,

Magadi Soda Company Limited

With further reference to your letter of 20th March, 1928, we have pleasure to report that the new Leases and Surrenders of the old Leases have now been completed and stamped.

1. We beg to hand you the old title deeds of the property in Kenya viz:-

- | | |
|------------------------|----------------------------|
| (1) 12th April 1911 | Lake Lease |
| (2) 13th April 1911 | Railway Contract |
| (3) 16th May 1919 | Duplicate Trust Deed |
| (4) 22nd October 1919 | Kilindini Lease |
| (5) 22nd October 1919 | Kajiado Lease |
| (6) 8th April 1924 | Office Copy Order of Court |
| (7) 20th December 1924 | Office Copy Order of Court |

2. A cheque for £322. 15. 6. being the sum referred to in clause 4 of the Port Lease.

3. Three original Leases and Surrenders as follows:-

- Lake Lease
- Railway Lease
- Port Lease
- Surrender of Lake and Railway Leases
- Surrender of Kilindini Lease
- Surrender of Kajiado Lease

All dated the 20th March, 1928.

MESSE~~R~~S. SUTTON, OMMANNEY & OLIVER TO THE CROWN AGENTS.

3 & 4, Great Winchester Street,
London, E.C.2.

4th April, 1929.

Gentlemen,

Magadi Soda Company Limited

With further reference to your letter of 20th March, 1928, we have pleasure to report that the new Leases and Surrenders of the old Leases have now been completed and stamped.

1. We beg to hand you the old title deeds of the property in Kenya viz:-

- (1) 12th April 1911 Lake Lease
- (2) 13th April 1911 Railway Contract
- (3) 16th May 1919 Duplicate Trust Deed
- (4) 22nd October 1919 Kilindini Lease
- (5) 22nd October 1919 Kajiado Lease
- (6) 8th April 1924 Office Copy Order of Court
- (7) 20th December 1924 Office Copy Order of Court

2. A cheque for £322. 15. 6. being the sum referred to in clause 4 of the Port Lease.

3. Three original Leases and Surrenders as follows:-

Lake Lease

Railway Lease

Port Lease

Surrender of Lake and Railway Leases

Surrender of Kilindini Lease

Surrender of Kajiado Lease

all dated the 20th March, 1928.

We understand that these documents are to be transmitted to the Government of Kenya in accordance with paragraph 3 of the Colonial Office's letter to us dated 6th October 1927 for the purpose of registration in the Colony.

As requested by paragraph 4 of your letter we are handing you under separate cover fifty prints of each of the completed documents referred to in paragraph 3 above for the use of the Colonial Office, the Colonial Government and yourselves.

We have the honour to be,

Gentlemen,

Your obedient servants,

(Sgd) Sutton *OWEN*

We understand that these documents are to be transmitted to the Government of Kenya in accordance with paragraph 3 of the Colonial Office's letter to us dated 6th October 1927 for the purpose of registration in the Colony.

As requested by paragraph 4 of your letter we are handing you under separate cover fifty prints of each of the completed documents referred to in paragraph 3 above for the use of the Colonial Office, the Colonial Government and yourselves.

We have the honour to be,

Gentlemen,

Your obedient servants,

(Sgd) Sutton Downing & Co. Ltd.

This Indenture

made the Twentieth
day of March One

thousand nine hundred and

twenty eight B E T W E E N THE BRITISH TRUSTS ASSOCIATION LIMITED whose registered office is situate at 32 Bishopsgate in the City of London (hereinafter called "the Association") of the first part THE MAGADI SODA COMPANY LIMITED in liquidation whose registered office is situate at 25 and 27 Bishopsgate aforesaid (hereinafter called "the Company") of the second part and the within mentioned HIS MOST GRACIOUS MAJESTY KING GEORGE THE FIFTH (herein and hereinafter referred to as His Majesty) of the third part.

W H E R E A S :-

- (1) This Surrender is Supplemental to the following Indentures that is to say:-
 - (a) An Indenture (hereinafter called the Trust Deed) dated the Sixteenth day of May One thousand nine hundred and nineteen and made between the Company of the one part and the Association of the other part being a Trust Deed to secure debentures to the aggregate nominal amount of Five hundred thousand pounds then about to be and since in part issued by the Company whereby the Company charged (inter alia) in favour of the Association as and by way of a floating security the whole of its undertaking and property for the time being whatsoever and wheresoever exclusive of any unalled capital with the payment of all moneys intended to be thereby secured.
 - (b) An Indenture of Lease (hereinafter referred to as "the Lease") dated the Twenty second day of October One thousand nine hundred and nineteen and made between His Majesty of the one part and the Company of the other part being a Lease of ALL THOSE two pieces or parcels of land situate at or near Kajlado on the Magadi Railway in the Masai Reserve in the Naivasha Province of the East Africa Protectorate being sub-divisions

Numbers One and Two of portion Number One (Land office Numbers One thousand eight hundred and eighty three/ One and One thousand eight hundred and eighty three/ two respectively) of Meridional District G. IV. d. South A.37 comprising in the whole One thousand and seventeen decimal eight acres or thereabouts be the same more or less whereof Twenty three acres or thereabouts are excepted and reserved in respect of a road reserve approximately shown on the plan annexed to the Lease by a dotted line and marked road reserve making a total of Nine hundred and ninety four decimal eight acres or thereabouts subject of this demise which said pieces or parcels of land are more particularly delineated and described on the said plan and thereon bordered with red EXCEPTING AND RESERVING as therein mentioned for a term of ninety nine years from the Twelfth day of April One thousand nine hundred and eleven at the rent therein specified.

(2) The security constituted by the Trust Deed some time since became enforceable and thereupon the floating charge contained in the Trust Deed crystallised and became a specific charge upon (inter alia) the hereditaments and premises comprised in and demised by the Lease AND WHEREAS by an Order of the High Court of Justice (Companies Winding Up) made on the Eighth day of April One thousand nine hundred and twenty four it was ordered that the Company should be wound up by the Court under the provisions of the Companies (Consolidation) Act 1908 and Herbert Edward Burgess the Senior Official Receiver in Companies Liquidation is the Liquidator of the Company AND WHEREAS by a further Order of the said High Court of Justice made on the Twentieth day of December One thousand nine hundred and twenty four a Scheme of Arrangement between the Company and its Debenture Holders Unsecured Creditors and Shareholders was duly sanctioned AND WHEREAS the Association

and the Company have agreed to execute such surrender and assignment as is hereinafter contained to the intent that His Majesty may grant to the Company or its successors and assigns a new lease of a portion of the piece or parcel of land within described and demised NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the premises the Association as Mortgagee and according to its estate and interest and in pursuance of the said Scheme of Arrangement and the powers in this behalf conferred by the said Trust Deed and of all other powers it hereunto enabling and at the request of the Company hereby surrenders and assigns and the Company hereby surrenders and assigns unto His Majesty ALL AND SINGULAR the hereditaments and premises comprised in and demised by the Lease TO HOLD the same unto and to the use of His Majesty his heirs and successors from the date hereof for all the residue now unexpired of the term of Ninety nine years created by the said Lease To the intent that the said term may merge and be extinguished in the freehold and inheritance of the said hereditaments and premises And to the further intent that His Majesty may forthwith grant such new Lease as aforesaid.

IN WITNESS whereof the Association and the Company have caused their respective Common Seals to be hereunto affixed the day and year first above written.

THE COMMON SEAL of the British Trusts Association Limited was hereunto affixed in the presence of (L.S)

W.S.Poole, Director
A.E.G. Topham, Secretary

THE COMMON SEAL of the Magadi Soda Company Limited in Liquidation was hereunto affixed in the presence of (L.S)

H.E.Burgess, Liquidator.

Numbers One and Two of portion Number One (Land office Numbers One thousand eight hundred and eighty three/ One and One thousand eight hundred and eighty three/ two respectively) of Meridional District South A.37 S. IV. d. comprising in the whole One thousand and seventeen decimal eight acres or thereabouts be the same more or less whereof Twenty three acres or thereabouts are excepted and reserved in respect of a road reserve approximately shown on the plan annexed to the Lease by a dotted line and marked road reserve making a total of Nine hundred and ninety four decimal eight acres or thereabouts the subject of demise which said pieces or parcels of land are more particularly delineated and described on the said plan and thereon bordered with red EXCEPTING AND RESERVING as therein mentioned for a term of ninety nine years from the Twelfth day of April One thousand nine hundred and eleven at the rent therein

(2) The security constituted by the Trust Deed some time since became enforceable and in pursuance of the floating charge contained in the Trust Deed crystallised and became a specific charge upon (inter alia) the hereditaments and premises comprised in and demised by the Lease AND WHEREAS by an Order of the High Court of Justice (Companies Winding Up) made on the Eighth day of April One thousand nine hundred and twenty four it was ordered that the Company should be wound up by the Court under the provisions of the Companies (Consolidation) Act 1908 and Herbert Edward Burgess the Senior Official Receiver in Companies Liquidation is the Liquidator of the Company AND WHEREAS by a further Order of the said High Court of Justice made on the Twentieth day of December One thousand nine hundred and twenty four a Scheme of Arrangement between the Company and its Debenture Holders Unsecured Creditors and Shareholders was duly sanctioned AND WHEREAS the Association

and the Company have agreed to execute such surrender and assignment as is hereinafter contained to the intent that His Majesty may grant to the Company or its successors and assigns a new lease of a portion of the piece or parcel of land within described and demised NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the premises the Association as Mortgagee and according to its estate and interest and in pursuance of the said Scheme of Arrangement and the powers in this behalf conferred by the said Trust Deed and of all other powers it hereunto enabling and at the request of the Company hereby surrenders and assigns and the Company hereby surrenders and assigns unto His Majesty ALL AND SINGULAR the hereditaments and premises comprised in and demised by the Lease TO HOLD the same unto and to the use of His Majesty his heirs and successors from the date hereof for all the residue now unexpired of the term of Ninety nine years created by the said Lease To the intent that the said term may merge and be extinguished in the freehold and inheritance of the said hereditaments and premises And to the further intent that His Majesty may forthwith grant such new Lease as aforesaid.

IN WITNESS whereof the Association and the Company have caused their respective Common Seals to be hereunto affixed the day and year first above written.

THE COMMON SEAL of the British Trusts Association Limited was hereunto affixed in the presence of (L.S)

W.S.Poole, Director
A.E.G. Topham, Secretary

THE COMMON SEAL of the Magadi Soda Company Limited in Liquidation was hereunto affixed in the presence of (L.S)

H.E.Burgess, Liquidator.

PUBLIC RECORD OFFICE LONDON

DATED 20th March 1929

KENYA COLONY AND PROTECTORATE
THE NARADI SODA COMPANY LIMITED
and another,

to

HIS MOST GRACIOUS MAJESTY KING
GEORGE THE FIFTH,

copy,

Surrender

KENYA COLONY AND PROTECTORATE.

Lease

OF

**LAKE MAGADI AND OTHER LANDS IN KENYA
COLONY AND PROTECTORATE FOR WORKING OF
SODA DEPOSITS.**

DATED, 20TH MARCH 1928.

SUTTON, OMMANNEY & OLIVER,
3 & 4 Great Winchester Street,
London, E.C.2.

KENYA COLONY AND PROTECTORATE.

Lease

OF

LAKE MAGADI AND OTHER LANDS IN KENYA
COLONY AND PROTECTORATE FOR WORKING OF
SODA DEPOSITS.

DATED, 20TH MARCH 1928.

SUTTON, OMMANBY & OLIVER,
3 & 4 Great Winchester Street,
London, E.C.2.

KENYA COLONY AND PROTECTORATE.

Lease

OF

LAKE MAGADI AND OTHER LANDS IN KENYA
COLONY AND PROTECTORATE FOR WORKING OF
SODA DEPOSITS.

DATED, 25th MARCH 1928

SUTTON, OMMANNEY & OLIVER,
3 & 4 Great Winchester Street,
London, E.C.2.

"Interpretation"

1. In these presents the following expressions or terms shall have the following meanings respectively:—

"The Colony"

(A) "The Colony" means Kenya Colony and Protectorate.

"The Government"

(B) "The Government" means the Government for the time being of the Colony.

"The Governor"

(C) "The Governor" means the Governor for the time being of the Colony or the person for the time being acting as such.

"The Magadi Soda Deposit"

(D) "The Magadi Soda Deposit" means the deposits of carbonate of soda and carbonate of soda mixed with any other salts obtainable from any of the lands included in the demise in Clause 2 of these presents.

"Soda Goods"

(E) "Soda Goods" means all or any of the following:—

(i) "Raw Soda" that is to say carbonate of soda or carb- of soda or soda mixed with any other salts as obtained from the Magadi Soda Deposit before calcination.

(ii) "Soda" that is to say soda ash carbonate of soda and other salts of soda as obtained from raw soda as above mentioned.

(iii) "Soda Products" that is to say soda crystals caustic soda bicarbonate of soda or any other commodities or preparations which are recognised as soda products in the chemical industry.

(iv) "Manufactured Soda" that is to say manufactured articles by means of which soda or soda products as above mentioned respectively form the essential or main constituents.

"The Railway Lease"

(F) "The Railway Lease" means the first before recited Lease of the date here-with.

"Month"

(G) "Month" means calendar month.

Demise

2. The Crown Agents for and on behalf of the Government in consideration of the rent and royalties hereinafter reserved and the covenants and conditions on the part of the Lessees to be observed and performed hereinafter contained hereby grant and demise unto the Lessees First all that piece of land situate at Lake Magadi in the Masai Province of the Colony containing by admeasurement 211,110 acres more or less that is to say L.O. No. 1026 of Meridional District South A 37 and secondly all that piece of land situate at Lake Natron in the Masai Province of the Colony containing by admeasurement

11,364 acres more or less that is to say L.O. No. 3867 of Meridional District South A 37 which said two pieces of land containing together by admeasurement 222,474 acres more or less are bordered and delineated on the plan drawn on these presents and more particularly on Land Survey Plan No. 12,707 deposited in the Land Surveys Office at Nairobi Together with the Magadi soda deposit and Together with full free and uninterrupted right for the Lessees their officers servants and workmen to search for dig get win and carry away all the Magadi Soda Deposit Together also with full and free liberty and right for the Lessees their servants and agents of access to the Guaso Nyiro and all reasonable facilities for obtaining and leading water therefrom or thereto for the purposes of their servants or agents and for the purposes of the Lessees' operations and for any other purposes of the demised premises.

And together further with liberty at all times during the said term to do all such things as the Lessees may deem necessary and convenient for the working of the Magadi Soda Deposit and to construct any works ships buildings stores appliances reservoirs water-races roads tramways railways canals and other means of transport in upon over and under the demised lands as they may deem necessary or convenient for effectually exploring winning working treating raising stocking dressing converting manufacturing transporting or otherwise disposing of the Magadi Soda Deposit.

Excepting nevertheless out of the demise hereby made and reserving unto the Crown Agents for and on behalf of the Government as follows

(i) All mines minerals and mineral substances including precious stones and all coins treasure relics antiquities and other singular things lying in or under the demised lands other than the Magadi Soda Deposit and also other than minerals and mineral substances removed in properly working the Magadi Soda Deposit (all which premises other than as aforesaid are hereinafter included in the term "the excepted minerals") with full and free right and liberty for the Crown Agents and the Government and their lessees and persons authorised by them to search for sink work get raise carry away and dispose of the excepted minerals and for such purposes to sink drive erect make and use all such pits shafts drifts roads tunnels airways watercourses railways tramways and other roads through across or under the demised lands and the workings of the Lessees as shall be necessary or convenient And in the course of working to let down the surface of the demised lands and the Magadi Soda Deposit and the workings of the Lessees.

"Interpretation"

1. In these presents the following expressions or terms shall have the following meanings respectively:—

"The Colony"

(A) "The Colony" means Kenya Colony and Protectorate.

"The Government"

(B) "The Government" means the Government for the time being of the Colony.

"The Governor"

(C) "The Governor" means the Governor for the time being of the Colony or the person for the time being acting as such.

"The Magadi Soda Deposit"

(D) "The Magadi Soda Deposit" means the deposits of carbonate of soda and carbonate of soda mixed with any other salts obtainable from any of the lands included in the demise in Clause 2 of these presents.

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(E) "Soda Goods" means all or any of the following:—

(i) "Raw Soda" that is to say carbonate of soda and carbonate of soda or soda mixed with any other salts as obtained from the Magadi Soda Deposit before calcination.

(ii) "Soda" that is to say soda ash carbonate of soda and other salts of soda as obtained from raw soda as above mentioned.

(iii) "Soda Products" that is to say soda crystals caustic soda bicarbonate of soda or any other commodities or preparations which are recognised as soda products in the chemical industry.

(iv) "Manufactured Soda" that is to say manufactured articles or merchandise of which soda or soda products as above mentioned respectively form the essential or main constituent.

"The Railway Lease"

(F) "The Railway Lease" means the first before recited Lease of even date herewith.

"Month"

(G) "Month" means calendar month.

Demise

2. The Crown Agents for and on behalf of the Government in consideration of the rent and royalties hereinafter reserved and the covenants and conditions on the part of the Lessees to be observed and performed hereinafter contained hereby grant and demise unto the Lessees First all that piece of land situate at Lake Magadi in the Masai Province of the Colony containing by admeasurement 211,110 acres more or less that is to say L.O. No. 1026 of Meridional District South A 37 and secondly all that piece of land situate at Lake Natron in the Masai Province of the Colony containing by admeasurement

11,364 acres more or less that is to say L.O. No. 3867 of Meridional District South A 37 which said two pieces of land containing together by admeasurement 222,474 acres more or less are bordered and delineated on the plan drawn on these presents and more particularly on Land Survey Plan No. 12,787 deposited in the Land Surveys Office at Nairobi Together with the Magadi soda deposit and Together with full free and uninterrupted right for the Lessees their officers servants and workmen to search for dig get win and carry away all the Magadi Soda Deposit Together also with full and free liberty and right for the Lessees their servants and agents of access to the Guaso Nyiro and all reasonable facilities for obtaining and leading water therefrom or thereto for the purposes of their servants or agents and for the purposes of the Lessees' operations and for any other purposes of the demised premises.

And together further with liberty at all times during the said term to do all such things as the Lessees may deem necessary and convenient for the working of the Magadi Soda Deposit and to construct any works ships buildings stores appliances reservoirs water-races roads tramways railways canals and other means of transport in upon over and under the demised lands as they may deem necessary or convenient for effectually exploring winning working treating raising stocking dressing converting manufacturing transporting or otherwise disposing of the Magadi Soda Deposit.

Excepting nevertheless out of the demise hereby made and reserving unto the Crown Agents for and on behalf of the Government as follows:

- (i) All noble minerals and mineral substances including precious stones and all coins treasure relics antiquities and other similar things lying in or under the demised lands other than the Magadi Soda Deposit and also other than minerals and mineral substances removed in properly working the Magadi Soda Deposit (all which premises other than as aforesaid are hereinafter included in the term "the excepted minerals") with full and free right and liberty for the Crown Agents and the Government and their lessees and persons authorised by them to search for sink work get raise carry away and dispose of the excepted minerals and for such purposes to sink drive erect make and use all such pits shafts drifts roads tunnels airways watercourses railways tramways and other roads through across or under the demised lands and the workings of the Lessees as shall be necessary or convenient And in the course of working to let down the surface of the demised lands and the Magadi Soda Deposit and the workings of the Lessees.

(ii) So much of the Magadi Soda Deposit as the natives may remove for their own purposes in the exercise of any native right.

(iii) Such part or parts (not being land which is already occupied by any of the Lessees' works or operations or required for the subsequent development or expansion of their works or operations) of the demised lands as the Government shall from time to time think proper to reserve or allocate for native encampments or any similar purpose.

(iv) Full and free right and liberty for the Government to construct maintain renew repair and use any telegraph or telephone line or lines for the use of the Government in along or over the demised lands of any part or parts thereof and full and free right and liberty for the Government and persons authorised by them to enter upon and occupy so much of the demised lands as may be necessary for the said purposes or any of them without making any compensation therefor but making good all damage done.

Provided always that the Crown Agent and the Government and their Lessees and persons authorised by them shall exercise the rights and liberties hereby reserved in such a manner as not to interrupt interfere with or obstruct prejudicially the working of the Magadi Soda Deposit or the exercise or enjoyment of the liberties hereby granted.

3. The Lessees shall during the said term pay the yearly rent of twenty shillings yearly in advance without any deduction on the 1st day of January in every year and so in proportion for any less period than one year the payments for the first two years of the said term having been made on the execution of these presents as the Crown Agents and the Government hereby acknowledge.

4. (i) Until the 31st day of October 1929 no royalty shall be payable hereunder.

(ii) After the 31st day of October 1929 the Lessees shall on the 1st day of the months of April and of October respectively in each year pay to the Government or as the Government shall direct

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in respect of every ton of Raw Soda Soda or Soda Products and for every ton of soda estimated to be contained in Manufactured Soda the produce of the demised premises which shall be exported from or sold and delivered or used for commercial purposes within the Colony during the six months ending on the 31st day of October or the 30th day of April as the case may be preceding the day appointed for payment the royalties following that is to say -

(A) In respect of every ton of Raw Soda the sum of two shillings per ton.

(B) In respect of every ton of Soda Soda Products or Soda contained in Manufactured Soda the sum of three shillings per ton.

(iii) The first payment of royalties hereunder shall be in respect of the period from the 1st day of November 1929 to the 30th day of April 1930 and shall be made on the 1st day of October 1930.

(iv) Raw Soda Soda Soda Products and soda contained in Manufactured Soda on which royalty has been paid by the Lessees shall not be liable to further royalty or duty when exported from the Colony in their original or any manufactured state.

5. The Lessees for themselves their successors and assigns hereby covenant with the Crown Agents and also as a separate covenant with the Government as follows:-

(i) The Lessees will pay the rent and royalties hereinbefore reserved and made payable at the times and in the manner aforesaid. To pay rent and royalties

(ii) For the purpose of ascertaining the amount of royalties payable hereunder the Lessees will keep proper books of account and the Lessees will keep such books from the commencement of the term hereby granted as if royalties were hereby made payable during the whole of the said term and permit the Government and any agent appointed for that purpose at all reasonable times to inspect the said books of account and to take copies thereof and extracts therefrom. To keep proper books and permit inspection

(iii) On the 30th day of April and the 31st day of October in each year of the term hereby granted or within 28 days thereafter the Lessees will render to the Government an account showing the amount of Raw Soda Soda Soda Products and Manufactured Soda respectively exported from sold and delivered or used for commercial purposes within the Colony during the six months ending on such 30th day of April or To render accounts

- (ii) So much of the Magadi Soda Deposit as the natives may remove for their own purposes in the exercise of any native right.
- (iii) Such part or parts (not being land which is already occupied by any of the Lessees' works or operations or required for the subsequent development or expansion of their works or operations) of the demised lands as the Government shall from time to time think proper to reserve or allocate for native encampments or any similar purpose.
- (iv) Full and free right and liberty for the Government to construct maintain renew repair and use any telegraph or telephone line or lines for the use of the Government in along or over the demised lands or any part or parts thereof and full and free right and liberty for the Government persons authorised by them to enter upon and occupy so much of the demised lands as may be necessary for the said purposes or any of them without making any compensation therefor but making good all damage done.

Provided always that the Crown Agent and the Government and their Lessees and persons authorised by them shall exercise the rights and liberties hereby reserved in such a manner as not to interrupt interfere with or diminish prejudicially the working of the Magadi Soda Deposit or the exercise or enjoyment of the liberties hereby granted.

The term of the lease hereby granted shall be for the term of 50 years from the 1st day of November 1929 yielding and paying the rent and royalties hereinafter reserved and subject to the provisions hereinafter contained.

3. The Lessees shall during the said term pay the yearly rent of twenty shillings yearly in advance without any deduction on the 1st day of January in every year and so in proportion for any less period than one year the payments for the first two years of the said term having been made in the execution of these presents as the Crown Agents and the Government hereby acknowledge.

4. (i) Until the 31st day of October 1929 no royalty shall be payable hereunder.

(ii) After the 31st day of October 1929 the Lessees shall on the 1st day of the months of April and of October respectively in each year pay to the Government or as the Government shall direct

in respect of every ton of Raw Soda Soda or Soda Products and for every ton of soda estimated to be contained in Manufactured Soda the produce of the demised premises which shall be exported from or sold and delivered or used for commercial purposes within the Colony during the six months ending on the 31st day of October or the 30th day of April as the case may be preceding the day appointed for payment the royalties following that is to say -

- (A) In respect of every ton of Raw Soda the sum of two shillings per ton.
- (B) In respect of every ton of Soda Soda Products or Soda contained in Manufactured Soda the sum of three shillings per ton.

(iii) The first payment of royalties hereunder shall be in respect of the period from the 1st day of November 1929 to the 30th day of April 1930 and shall be made on the 1st day of October 1930.

(iv) Raw Soda Soda Soda Products and soda contained in Manufactured Soda on which royalty has been paid by the Lessees shall not be liable to further royalty or duty when exported from the Colony in their original or any manufactured state.

5. The Lessees for themselves their successors and assigns hereby covenant with the Crown Agents and also as a separate covenant with the Government as follows :-

(i) The Lessees will pay the rent and royalties hereinbefore reserved and made payable at the times and in the manner aforesaid. To pay rent and royalties

(ii) For the purpose of ascertaining the amount of royalties payable hereunder the Lessees will keep proper books of account and the Lessees will keep such books from the commencement of the term hereby granted as if royalties were hereby made payable during the whole of the said term and permit the Government and any agent appointed for that purpose at all reasonable times to inspect the said books of account and to take copies thereof and extracts therefrom. To keep proper books and permit inspection

(iii) On the 30th day of April and the 31st day of October in each year of the term hereby granted or within 28 days thereafter the Lessees will render to the Government an account showing the amount of Raw Soda Soda Soda Products and Manufactured Soda respectively exported from sold and delivered or used for commercial purposes within the Colony during the six months ending on such 30th day of April or To render accounts

31st day of October and every such account shall be certified by the auditor or auditors for the time being of the Lessees and an account so certified shall as to the figures appearing in such account be binding on the Lessees.

(iv) The Lessees will forthwith commence and thereafter during the continuance of the term hereby granted vigorously continue to work the Magadi Soda Deposits in a skilful and workmanlike manner to the best economic capacity and to get win and carry away the Magadi Soda Deposit in accordance with the provisions of these presents fairly and properly and according to the best and most approved method of working deposits of carbonate of soda until the expiration or sooner determination of these presents.

(v) (A) Without prejudice to or in any way limiting the covenant by the Lessees hereinbefore contained the Lessees will in each of the years ending on the 31st day of October 1927, 1928, 1929, 1930 and 1931, get and despatch by railway not less than 50,000 tons of Soda Goods and in the year ending on the 31st day of October 1932 and every subsequent year ending on the 31st day of October during the term hereby granted the Lessees will get and despatch by railway not less than 100,000 tons of Soda Goods.

Provided that subject to Clause 13 hereof whether the minimum weights set out above are despatched by the Lessees or not the Lessees shall be liable for and shall pay to the Government the amount of royalty appropriate to and due in respect thereof.

(B) If and whenever the Lessees shall in any year have made default to an extent not exceeding 10 per cent. of the tonnage stipulated for that year then the Lessees may in the first three months of the next succeeding year make good such deficiency but the amount making good such deficiency shall not also be taken as part of the tonnage stipulated for the latter year. No excess of tonnage in any preceding year shall be allowed towards making good a deficiency in any subsequent year.

(C) Provided always and it is hereby agreed that any breach of the covenant contained in sub-clause (A) above not due to force majeure as hereinafter defined shall be waived if the Lessees shall on or before the 1st day of April next following the date on which such breach shall have occurred pay the amount which would have been payable for royalty and freight for the period in respect of which such breach shall have occurred, if the

Lessees had duly performed the said covenant contained in sub-clause (A) above. For determining such amount the rate of royalty shall be two shillings per ton and the rate of freight shall be that laid down in the Railway Lease.

Provided further and it is hereby agreed that nothing in this lease contained except the provisions of Clause 13 hereof shall prevent the Government at its option from electing to sue the Lessees for any unpaid royalty and to obtain satisfaction of any judgment by attachment of any of the Lessees' property.

(vi) The Lessees will not cause or permit any unnecessary or reasonably avoidable obstruction or interruption to the development by the Crown Agents or the Government or their lessees or any person authorised by them of the excepted minerals or to the transport conveyance or conversion of the produce thereof or to the exercise or enjoyment of any right or liberty excepted out of the demise hereby made or hereby reserved.

(vii) The Lessees will keep all roads tunnels watercourses tramways railways engines fixed machinery and other works and conveniences belonging to or used in connection with the Magadi Soda Deposit in good and substantial repair and condition and working order so far as reasonably practicable and necessary for the proper working of the Magadi Soda Deposit except only such of the same as shall have been abandoned by reason that they have become unnecessary for the further or proper working of the Magadi Soda Deposit.

(viii) The Lessees will permit the Crown Agents and the Government and any person or persons authorised by them or either of them in this behalf at all reasonable times to enter upon inspect and examine the demised lands and the Magadi Soda Deposit and every part thereof respectively to ascertain the condition thereof and manner of working and managing the same or for any other reasonable purpose. And will cause all such persons to have all such assistance as they may reasonably request from the employees of the Lessees.

Provided always that this Clause shall not entitle the Crown Agents or the Government or any person or persons authorized by them or either of them to inspect or receive any information in regard to any new plant hereafter installed for the purpose of improving the degree of purity of the product of the Magadi Soda Deposit.

(ix) The Lessees shall comply with all obligations which may be imposed on them by any general Ordinances for the time being

Not to obstruct working of excepted minerals

To keep works in repair

To permit entry and view

To comply with Ordinances

To work

Yearly minimum workings

31st day of October and every such account shall be certified by the auditor or auditors for the time being of the Lessees and an account so certified shall as to the figures appearing in such account be binding on the Lessees.

(iv) The Lessees will forthwith commence and thereafter during the continuance of the term hereby granted vigorously continue to work the Magadi Soda Deposits in a skilful and workmanlike manner to the best economic capacity and to get win and carry away the Magadi Soda Deposit in accordance with the provisions of these presents fairly and properly and according to the best and most approved method of working deposits of carbonate of soda until the expiration or sooner determination of these presents.

(v) (A) Without prejudice to or in any way limiting the covenant by the Lessees lastly hereinbefore contained the Lessees will in each of the years ending on the 31st day of October 1927, 1928, 1929, 1930 and 1931, and despatch by railway not less than 50,000 tons of Soda Goods and in the year ending on the 31st day of October 1932 and every subsequent year ending on the 31st day of October during the term hereby granted the Lessees will get and despatch by railway not less than 100,000 tons of Soda Goods.

Provided that subject to Clause 13 hereof whether the minimum weights set out above are despatched by the Lessees or not the Lessees shall be liable for and shall pay to the Government the amount of royalty appropriate to and due in respect thereof.

(b) If and whenever the Lessees shall in any year have made default to an extent not exceeding 10 per cent. of the tonnage stipulated for that year then the Lessees may in the first three months of the next succeeding year make good such deficiency but the amount making good such deficiency shall not also be taken as part of the tonnage stipulated for the latter year. No excess of tonnage in any preceding year shall be allowed towards making good a deficiency in any subsequent year.

(c) Provided always and it is hereby agreed that any breach of the covenant contained in sub-clause (a) above, not due to *force majeure* as hereinafter defined shall be waived if the Lessees shall on or before the 1st day of April next following the date on which such breach shall have occurred pay the amount which would have been payable for royalty and freight for the period in respect of which such breach shall have occurred, if the

Lessees had duly performed the said covenant contained in sub-clause (a) above. For determining such amount the rate of royalty shall be two shillings per ton and the rate of freight shall be that laid down in the Railway Lease.

Provided further and it is hereby agreed that nothing in this lease contained except the provisions of Clause 13 hereof shall prevent the Government at its option from electing to sue the Lessees for any unpaid royalty and to obtain satisfaction of any judgment by attachment of any of the Lessees' property.

(vi) The Lessees will not cause or permit any unnecessary or reasonably avoidable obstruction or interruption to the development by the Crown Agents or the Government or their lessees or any person authorised by them of the excepted minerals or to the transport conveyance or conversion of the produce thereof or to the exercise or enjoyment of any right or liberty excepted out of the demise hereby made or hereby reserved.

Not to obstruct working of excepted minerals

(vii) The Lessees will keep all roads tunnels watercourses tramways railways engines fixed machinery and other works and conveniences belonging to or used in connection with the Magadi Soda Deposit in good and substantial repair and condition and working order so far as reasonably practicable and necessary for the proper working of the Magadi Soda Deposit except only such of the same as shall have been abandoned by reason that they have become unnecessary for the further or proper working of the Magadi Soda Deposit.

To keep works in repair

(viii) The Lessees will permit the Crown Agents and the Government and any person or persons authorised by them or either of them in this behalf at all reasonable times to enter upon inspect and examine the demised lands and the Magadi Soda Deposit and every part thereof respectively to ascertain the condition thereof and manner of working and managing the same or for any other reasonable purpose. And will cause all such persons to have all such assistance as they may reasonably request from the employees of the Lessees.

To permit entry and view

Provided always that this Clause shall not entitle the Crown Agents or the Government or any person or persons authorized by them or either of them to inspect or receive any information in regard to any new plant hereafter installed for the purpose of improving the degree of purity of the product of the Magadi Soda Deposit.

(ix) The Lessees shall comply with all obligations which may be imposed on them by any general Ordinance for the time being

To comply with Ordinance

in force in the Colony except only in so far as any such Ordinance shall impose or purport to impose upon the Lessees an export duty on Raw Soda Soda Soda Products or Manufactured Soda.

- (X) In the construction of any works which may interfere with the traffic in any road street path or footway or with any rights of water or other rights or properties the Lessees shall not interfere with public and private conveniences and rights more than may be reasonably necessary and shall take all such precautions and provide and maintain all such temporary and permanent accommodation works as may be necessary or proper for the prevention of damage or injury to any property or person or for the due preservation or maintenance of any public or private right or property.
- (XI) The Lessees shall be fully responsible for and shall indemnify and keep indemnified the Government against all accidents damages claims and losses which may occur or be incurred or claimed in or by reason of the construction of any works or the use of any plant engines or other appliances in connection therewith and if the Government shall by reason of the default of the Lessees be compelled to make any payment in respect of such damages claims or losses then and in every such case the Lessees shall repay to the Government on demand the amount of the same so far as of the costs incurred therein. It is to be understood that this clause shall not extend to any accident damage claim or loss which may occur or be incurred in or by reason of the working of any railway or the administration or authority for the time being and from time to time working or managing the Kenya and Uganda Railway unless the same shall have arisen from some neglect or default of the Lessees.
- (XII) The Lessees shall at all times during the term hereby granted provide and maintain a convenient office at some place on the demised premises at or to which any notices to be given to the Lessees under these presents may be left or addressed.
- (XIII) The Lessees shall not at any time during the continuance of this Lease sell give barter or otherwise dispose of any arms or ammunition of any description to any native or permit or suffer any of their employees to make any such sale gift barter or other disposition.
- (XIV) The Lessees shall not in any way mingle or interfere with the rights of natives and particularly any native rights of hunting

Not to interfere with public or private rights

To indemnify Government against claims

Not to interfere with public or private rights

To indemnify Government against claims

To indemnify Government against claims

or fishing taking water timber or firewood or collecting or removing Raw Soda from the demised premises for their own purposes.

- (xv) The Lessees shall not at any time during the continuance of this Lease sell give or barter any spirituous liquor to any native or permit or suffer any such sale gift or barter to be made by any employee or agent of the Lessees or import or authorise the importation of any spirituous liquor into the Colony or any part thereof except for the use of the European agents or employees of the Lessees and in accordance with and subject to such rules as may from time to time be made by the Governor in that behalf. No spirituous liquor to be sold to natives nor imported except for Europeans
- (xvi) If the Government shall incur any expenditure in erecting or maintaining any sanitary works or regulations upon or in the neighbourhood of the Lessees' works the Lessees shall so far as such expenditure is rendered necessary or increased by the operations of the Lessees or by the presence of the agents or workmen of the Lessees pay to the Government on demand as a contribution towards the said expenditure such proportion as shall be just and equitable in the circumstances such proportion in case of difference to be settled by the Governor. As to liability for special sanitary measures
- (xvii) The Lessees shall provide at or near the site of their works such huts or other accommodation for the use of the native labourers or workmen employed in the Lessees' works and also such hospitals medical officers and attendants medicines and medical stores for the like use as may be necessary. Huts or other accommodation hospitals and medicines for use of natives to be provided
- (xviii) The Lessees shall at all times during the term hereby granted comply with all such requirements and make all such arrangements as may be made or directed by the Government to secure the proper treatment of native labourers or workmen. Native labour
- (xix) The Lessees will at all times during the term hereby granted observe the following provisions: As to user of roads and facilities for travellers
 - (A) They will allow all roads made by the Lessees upon the demised premises to be used for the public service except roads inside or around their works.
 - (B) They will permit travellers to encamp with their servants animals waggons and baggage for a period not exceeding 48 hours on any part of the demised premises which is uncultivated and which is not within one mile of any works or dwelling house and allow travellers and their

servants and animals access to any river stream or lake upon the demised premises outside of the Lessees' works.

(xx) The Lessees will at the expiration or sooner determination of the term hereby granted deliver up to the Government the demised premises with all buildings and fixtures thereon except so far as the Magadi Soda Deposit shall have been worked out under these presents and except also such fixtures and things as the Lessees are by law entitled to remove in such state and condition in all respects as shall be consistent with the due performance and observance of the provisions herein contained and in proper order for the future working of the Magadi Soda Deposit.

(xxi) (A) The Lessees shall not assign underlet or part with the possession of the demised premises or any part thereof or suffer any person (other than the Lessees) or any person to occupy the demised premises or any part thereof as a licensee. Without the previous consent in writing of the Crown Agents such consent shall not be unreasonably withheld and this restriction shall not apply to underletting for residential purposes only.

(B) Provided always that the Crown Agents may withhold such consent unless the Lessees shall before the assignment or underletting or any agreement for the same shall be executed deliver to the Crown Agents an indenture to be prepared by the solicitor for the time being of the Crown Agents at the cost of the Lessees containing a covenant by the intended assignee or underlessee with the Crown Agents and also separately with the Government to perform and observe during the term assigned or granted to him the covenants by the Lessees and conditions in these presents contained in the same manner as if such covenants and conditions were therein repeated with the substitution of the name of the intended assignee or underlessee for the name of the Lessees and with such other alterations as the circumstances shall render necessary and also containing a provision determining the term thereby assigned or granted on breach of any of the said covenants by the intended assignee or underlessee.

(C) Provided also that upon any assignment of the demised premises or any part thereof being made in accordance with these presents if such indenture as hereinbefore in this clause mentioned shall have been duly executed by the assignor and delivered to the Crown Agents then the Lessees making the

assignment shall thereupon cease to be personally liable under any of the covenants or obligations of these presents so far as the same relate to the premises comprised in such assignment but without prejudice to any right of action or remedy of the Crown Agents or the Government in respect of any antecedent breach by the Lessees of any of such covenants or obligations.

(xxii) (A) The Governor may from time to time appoint any person to be a Director of the Lessees and may at any time remove such person from being a Director and appoint another person in his place.

The Governor may appoint one Director of the Lessees

(B) The person so appointed shall be entitled to hold office as a Director until he resigns or dies or becomes bankrupt compounds with his creditors or takes the benefit of any Act for the time being in force for the relief of insolvent debtors or be found lunatic or becomes of unsound mind or is removed from office by the Governor whichever event first happens.

(C) Not more than one person shall at any time be entitled to hold office as a Director by virtue of appointments hereunder.

(D) Any such appointment shall be in writing under the hand of the Governor and served on the Lessees.

(E) A Director appointed hereunder shall not require any qualification.

(F) The Articles of Association of the Lessees shall provide accordingly and if necessary shall be altered in this behalf.

(xxiii) (A) If and whenever any excepted mineral (that is to say any mine mineral or mineral substance precious stone coin treasure relic antiquity or other similar thing excepted out of the demise hereby made) shall be found in or upon the demised lands the Lessees shall forthwith give notice thereof to the Government.

To give notice of finding any excepted mineral

(B) If any excepted mineral so found can be got without injury thereto in the ordinary course of working the Magadi Soda Deposit the Lessees shall get the same without injury thereto accordingly and hold the same for the Government and both in and after getting the same the Lessees shall take all reasonable steps for the safe preservation of the same.

(C) If any excepted mineral so found cannot be got without injury thereto in the ordinary course of working the Magadi Soda Deposit the Lessees shall forthwith upon any such discovery cease working so far as necessary for the preservation of the thing found and shall leave their workings at and adjacent to the thing found open for a period of one month for the inspection

COLONY AND PROTECTORATE OF KENYA.

Lease

OF

**PORT, BRANCH RAILWAY LINE, WORKS AND PIER
AT KILINDINI.**

DATED 20TH MARCH, 1928.

SUTTON, OMMANNEY & OLIVER,
3 & 4 Great Winchester Street,
London, E.C.2.

COLONY AND PROTECTORATE OF KENYA.



Lease

OF

PORT BRANCH RAILWAY LINE, WORKS AND PIER
AT KILINDINI.

DATED 20TH MARCH, 1928.

SUTTON, OMMANNEY & OLIVER,
3 & 4 Great Winchester Street,
London, E.C.2.

(22815*)

C.O. 533 / 385

ALLY WITHOUT PERMISSION OF THE
PUBLIC RECORD OFFICE, LONDON

COLONY OF KENYA.

REGISTRY OF TITLES.

(DISTRICT.)

TITLE No.

ANNUAL RENT One peppercorn.

TERM 99 years From 1.11.1924 to 31.10.2023.

Know all Men by these presents that for the consideration hereinafter expressed I EDWARD WILLIAM MACLEAY GRIGG Knight Commander of the Royal Victorian Order Companion of the Most Distinguished Order of Saint Michael and Saint George Companion of the Distinguished Service Order upon whom His Majesty has conferred the decoration of the Military Cross Lieutenant-Colonel in His Majesty's Army (retired) the GOVERNOR AND COMMANDER IN CHIEF OF THE COLONY AND PROTECTORATE OF KENYA on behalf of HIS MOST GRACIOUS MAJESTY KING GEORGE THE FIFTH do hereby under and by virtue of the powers vested in me Grant unto the MAGADY SODA COMPANY LIMITED a Company incorporated pursuant to the laws of England under the Companies Acts 1908 to 1917 and having its registered office situate at Broadway Buildings 50/64 Broadway in the City of Westminster (hereinafter referred to as the Lessees which expression shall where the context so admits include their successors and permitted assigns) All that piece of land situate

District of the
by measurement
to say Portion No.
Meridional District

Province of the said Colony containing
acres more or less that is
Land Office No. of
which said piece of land with

the dimensions abutments and boundaries thereof as delineated on the plan drawn on these presents and more particularly on Land Survey Plan Number _____ deposited in the Land Surveys Office at Nairobi together with the buildings and erections standing thereon and including the Depot Works together also with the pier known as Shimanzi Pier including the conveyor plant and apparatus used in connection therewith and the Branch Railway Line leading from the Kenya and Uganda Railway at Kilindini to the said Depot Works together with all appurtenances but not including the land upon which the said pier and conveyor plant are constructed. Excepting nevertheless out of the grant hereby made and reserving unto the Governor as is more particularly in the Schedule hereto excepted and reserved TO HOLD for the term of ninety _____ years from the first day of November One thousand nine hundred and twenty-four Subject to the payment of a Premium of Shillings Six thousand four hundred and fifty-five cents forty-two on the execution of these presents and to the payment for the said term of an annual rent of one peppercorn payable in advance on the First day of January in each year to the provisions and conditions contained in the Crown Lands Ordinance One thousand nine hundred and fifteen (excepting Part Eleven thereof and except as is herein otherwise provided) to the Registration of Titles Ordinance One thousand nine hundred and nineteen and also to the special conditions contained in the Schedule hereto.

IN WITNESS whereof I the said Governor have hereunto set my hand and the Seal of the Colony at Nairobi this _____ day of _____ One thousand nine hundred and twenty _____ in the presence of _____

[SCHEDULE

Schedule.

COLONY AND PROTECTORATE OF KENYA.

This Indenture made the Twentieth day of March One thousand nine hundred and twenty-eight Between THE CROWN AGENTS FOR THE COLONIES (hereinafter referred to as "the Crown Agents") acting for and on behalf of the Government of the Colony and Protectorate of Kenya (hereinafter referred to as "the Government") of the one part and the MAGADI SODA COMPANY LIMITED a Company incorporated pursuant to the laws of England under the Companies Acts 1908 to 1917 and having their registered office situate at Broadway Buildings 50/54 Broadway in the City of Westminster (hereinafter referred to as "the Lessees" which expression shall where the context so admits include their successors and permitted assigns) of the other part

Whereas by an Indenture (hereinafter called "the Magadi Lease") bearing even date with and executed before these presents and made between the same parties as are parties hereto and in the same order the lands known as "Lake Magadi" have been demised to the Lessees for a term of Ninety-nine years from the 1st day of November 1924 subject to the payment of the rent and royalties thereby reserved and the covenants on the part of the Lessees and the conditions therein contained for the purpose of working the deposits of carbonate of soda therein

And whereas by an Indenture (hereinafter called "the Railway Lease") bearing even date with and executed before these presents and made between the same parties as are parties hereto and in the same order the railway commencing at Magadi Junction on the Kenya and Uganda Railway and thence passing to a terminus near Lake Magadi TOGETHER with all lands which have been provided by the Government for the purpose of the construction and working of the said Railway have been demised to the Lessees for a term of

the dimensions abutments and boundaries thereof delineated on the plan drawn on these presents and more particularly on Land Survey Plan Number _____ deposited in the Land Surveys Office at Nairobi together with the buildings and erections standing thereon and including the Depot Works together also with the pier known as Shimanzi Pier including the conveyor plant and apparatus used in connection therewith and the Branch Railway Line leading from the Kenya and Uganda Railway at Kalindini to the said Depot Works together with all appurtenances but not including the land upon which the said pier and conveyor plant are constructed. Excepting nevertheless out of the grant hereby made and reserving unto the Governor as is more particularly in the Schedule hereto excepted and reserved TO HOLD for the term of ninety nine years from the _____ day of November One thousand nine hundred and twenty-four. Subject to the payment of a Premium of Shillings Six thousand four hundred and fifty-five cents forty-two on the execution of these presents and to the payment for the said term of an annual rent of one peppercorn payable in advance on the First day of January in each year to the provisions and conditions contained in the Crown Lands Ordinance One thousand nine hundred and fifteen (excepting Part Eleven thereof and except as is herein otherwise provided) to the Registration of Titles Ordinance One thousand nine hundred and nineteen and also to the special conditions contained in the Schedule hereto.

IN WITNESS whereof I the said Governor have hereunto set my hand and the Seal of the Colony at Nairobi this _____ day of _____ One thousand nine hundred and twenty _____ in the presence of _____

[SCHEDULE

Schedule.

COLONY AND PROTECTORATE OF KENYA.

This Indenture made the Twentieth day of March One thousand nine hundred and twenty-eight **Between** THE CROWN AGENTS FOR THE COLONIES (hereinafter referred to as "the Crown Agents") acting for and on behalf of the Government of the Colony and Protectorate of Kenya (hereinafter referred to as "the Government") of the one part and the MAGADI SODA COMPANY LIMITED a Company incorporated pursuant to the laws of England under the Companies Acts 1908 to 1917 and having their registered office situate at Broadway Buildings 50/54 Broadway in the City of Westminster (hereinafter referred to as "the Lessees" which expression shall where the context so admits include their successors and permitted assigns) of the other part

Whereas by an Indenture (hereinafter called "the Magadi Lease") bearing even date with and executed before these presents and made between the same parties as are parties hereto and in the same order the lands known as "Lake Magadi" have been demised to the Lessees for a term of Ninety-nine years from the 1st day of November 1924 subject to the payment of the rent and royalties thereby reserved and the covenants on the part of the Lessees and the conditions therein contained for the purpose of working the deposits of carbonate of soda therein

Lease of Magadi Soda Deposits

And whereas by an Indenture (hereinafter called "the Railway Lease") bearing even date with and executed before these presents and made between the same parties as are parties hereto and in the same order the railway commencing at Magadi Junction on the Kenya and Uganda Railway and thence passing to a terminus near Lake Magadi, **TOGETHER** with all lands which have been provided by the Government for the purpose of the construction and working of the said Railway have been demised to the Lessees for a term of

The Railway Lease

Ninety-nine years from the 1st day of November 1924 subject to the payment of the rent and royalties thereby reserved and the covenants on the part of the Lessees and the conditions therein contained for the purpose of working the said Railway

Agreement
for Lease

And whereas for the purpose of working the said deposits of carbonate of soda at Lake Magadi the Lessees or the Company whose assets they have acquired have at their own expense constructed a pier branch railway depot works sidings and other works at or near Kilindini upon lands provided by the Government and have agreed to take and the Government have agreed to grant a lease of the said premises

And whereas it has been agreed that the said Lease shall be in the form of these presents and shall contain such covenants and provisions as hereinafter contained

Now this Indenture witnesseth and it is hereby agreed and declared as follows

1. In these presents the following expressions or terms shall have the following meanings respectively

- (a) "The Colony" means the Colony and Protectorate of Kenya
- (b) "The Government" means the Government for the time being of the Colony
- (c) "The Governor" means the Governor for the time being of the Colony or the person for the time being acting as such
- (d) "Shimanzi Pier" means the pier included in the demise hereby made
- (e) "The Branch Railway" means the railway line included in the demise hereby made and connecting the Depot Works hereby demised with the Kenya and Uganda Railway
- (f) "Soda Goods" means Soda Goods as defined in the Magadi Lease
- (g) "Month" means calendar month

The Crown Agents for and on behalf of the Government hereby grant and demise to the Lessees Firstly all the Depot Works at Shimanzi near Kilindini known as the Magadi Depot and the Branch Railway Line leading from the Kenya and Uganda Railway at Kilindini to the said Depot Works together with all appurtenances and all the land held therewith and the dwelling-houses and buildings thereon the boundaries of all of which are and the site thereof is delineated on the plan annexed hereto and is thereon bordered red and Secondly all that the Conveyor Plant and apparatus used in connection therewith and the Pier adjacent thereto known as the Shimanzi Pier which said Conveyor Plant and Pier are bordered green on the said plan but excluding the land beneath the said Conveyor Plant and Pier Reserving unto the Company full and free right to carry its Conveyor Plant over the land bordered green together with the right of access at all times to the supports of the Conveyor Plant for the purpose of maintenance

Excepting nevertheless out of the demise hereby made and reserving unto the Crown Agents for and on behalf of the Government as follows

- (i) All mines minerals and mineral substances including precious stones and all other treasure reefs and other similar things lying in or under the demised premises other than carbonate of soda with full and free right and liberty for the Crown Agents and the Government and their Lessees and persons authorised by them to search for sink to work get raise carry away and dispose of the same and for such purposes to sink drive erect make and use all such pits shafts drifts roads tunnels airways watercourses railways tramways and other roads through across or under the demised premises as shall be necessary or convenient so far as the same can be done without interfering with the Lessees' working of the demised premises and without letting down or causing to be let down the surface of the demised premises and subject to the Government making good all damage done by such searching sinking and carrying away

- (ii) Full and free right and liberty for the Government in any case of State urgency (as to the existence of which the Government shall be the sole judge) at any time or times without any consent of or notice to the Lessees to take temporary possession of the whole or any part of the demised premises and any rolling-stock telegraphs telephones buildings

Demise of Depot Works Shimanzi Pier Branch Railway Line and appurtenances to Lessees

All minerals, precious stones, etc

In case of urgency to take possession

and other things of every description belonging to the Lessees in connection with the same and to use the same for their own purposes paying nevertheless therefor reasonable compensation to the Lessees.

Government user of Branch Railway

(iii) Full and free right and liberty for the Government from time to time and at any time to pass traffic over the Branch Railway for any Government or public purpose.

Alteration of Branch Railway

(iv) Full and free right and liberty for the Government from time to time and at any time to divert, take up, relay or in any way alter the Branch Railway. Provided that the use and enjoyment thereof by the Lessees shall not be thereby permanently prejudiced.

To hold unto the Lessees for the term of 99 years from the 1st day of November 1924 upon payment of the premium and rent hereinafter reserved and subject to determination as hereinafter provided.

Lease to determine if Magadi Lease determined

3. If the Magadi Lease shall be determined in any manner whatsoever then this Lease shall ipso facto determine also but subject to the provisions of Clause 10 of these presents and without prejudice to any right of action or remedy of the Crown Agents or the Government in respect of any antecedent breach by the Lessees of any of the covenants or provisions herein contained.

The Lessees shall upon the execution of these presents pay to the Crown Agents the sum of Shillings Six thousand four hundred and fifty five cents forty two as premium and shall during the said term pay the yearly rent of one pepper corn yearly in advance on the 1st day of January in every year: such premium and the payment of rent for the first two years of the said term having been made on the execution of these presents as the Crown Agents hereby acknowledge.

5. Provided always that if and whenever the said rent or any part thereof shall be in arrear for the space of 60 days next after the day when the same ought to be paid as aforesaid (whether the same shall or shall not have been legally demanded) or if there shall be any breach or non-observance of any of the covenants on the part of the Lessees (whether negative or affirmative) herein contained or if the Lessees while the demised premises or any part thereof remain vested in them shall go into liquidation whether voluntary or compulsory (except with the consent in writing of the Government a voluntary liquidation for

the purpose of reconstruction only) or suffer a receiver of their undertaking or any part thereof to be appointed by any Court of competent jurisdiction or commit any act which would render the Lessees liable to be wound up on petition or in the case of assigns of the Lessees not being a Corporation shall or any of them shall become bankrupt or make any assignment for the benefit of or enter into any arrangement for composition with their or his creditors then and in any of the said cases it shall be lawful for the Crown Agents or the Government although they may not have taken advantage of some previous default of the like nature at any time thereafter into and upon the demised premises or any part thereof in the name of the whole to re-enter and the same to have again repossessed and enjoy as in their former estate but subject to the provisions of Clause 10 of these presents. And thereupon this Lease (and the liberties hereby granted) shall cease and determine but without prejudice to any right of action or remedy which may have accrued to the Crown Agents or the Government in respect of any antecedent breach by the Lessees of any of the covenants or provisions herein contained provided that this proviso for re-entry shall be subject to all such restrictions and conditions and such relief against forfeiture as shall for the time being be applicable under the laws of England to a proviso for re-entry contained in leases of similar property in England.

6. The Lessees for themselves their successors and assigns hereby covenant with the Crown Agents and also as a separate covenant with the Government as follows:—

(i) The Lessees will pay the rent hereinbefore reserved at the To pay rent times and in the manner aforesaid.

(ii) (A) The Lessees shall not use or suffer to be used the demised premises or any part thereof for any purpose other than and except only purposes directly connected with working the deposits of carbonate of soda under the Magadi Lease or with the export of Soda Goods.

(B) The Lessees shall not use or suffer to be used the Branch Railway or any part thereof for any purpose other than and except only the transportation from and to Shimanzi Pier of things incidental to the export of Soda Goods.

(C) The Lessees shall not use or suffer to be used Shimanzi Pier or any part thereof for any purpose other than and except only (1) loading vessels with Soda Goods or (2) unloading from vessels coal or oil or other articles required for and incidental to working the said deposits of soda under the Magadi Lease or (3) supplying

LESSEES COVENANTS

As to user

LESSEES COVENANTS

vessels being or about to be loaded or unloaded as aforesaid with water and other requisites incidental to loading Soda Goods.

(D) The Lessees shall not use or suffer to be used Shimanzi Pier or any part thereof in any way whereby any harbour dues port dues charges for tugs or pilotage or other lawful charges are or may be evaded.

Provided always that the port dues payable by vessels using Shimanzi Pier and not going alongside any Government wharf pier jetty or quay shall be on the basis fixed for other ships calling at Mombasa Harbour and not going alongside any Government wharf pier jetty or quay.

(E) The Lessees shall not use or suffer to be used Shimanzi Pier or any part thereof so as in any way to enter or attempt to enter into competition with any Government Pier.

To repair and
deliver up to Government

- (10) (A) The Lessees shall, at all times keep the demised premises and all buildings erections works and fixtures for the time being and from time to time thereon including (by way of description and not of restriction) the Branch Railway in good and substantial repair and condition and working order (except such fixtures and things as the Lessees are by law entitled to remove and such of the same as shall have been abandoned by reason that they have become unnecessary for the further or proper working of the Magadi Soda Deposit) and the same in good and substantial repair and condition and working order deliver up to the Government at the expiration or (subject to the provisions of Clause 10 of these presents) sooner determination of the term hereby granted

Provided always that it shall not be deemed a breach of this clause if the Lessees for the purposes and in the ordinary course of their business demolish or make any alterations to or substitutions for buildings erections works and fixtures on the demised premises.

To permit entry to
view and to
take measurements

(B) The Lessees shall permit the Crown Agents or the Government or their respective agents with or without workmen and others from time to time and at any time during the said term at convenient hours in the daytime to enter into and upon the demised premises and to examine the state and condition thereof and shall repair and make good all defects and wants of reparation of which notice in writing shall be given to the Lessees by the Crown Agents or the Government within three months after the giving of such notice.

(iv) (A) The Lessees shall not assign underlet or part with the possession of the demised premises or any part thereof or suffer any corporation (other than the Lessees) or any person to occupy the demised premises or any part thereof as a licensee without the previous consent in writing of the Crown Agents but such consent shall not be unreasonably withheld and this restriction shall not apply to underletting for residential purposes only.

Not to assign
without license

(B) Provided always that the Crown Agents may withhold such consent if the proposed transaction does not form part of a larger transaction which includes as well the premises demised by the Magadi Lease or unless the Lessees shall before the assignment or underlease or any agreement for the same shall be executed deliver to the Crown Agents an Indenture to be prepared by the Solicitors for the time being of the Crown Agents at the cost of the Lessees containing a covenant by the intended assignee or underlessee with the Crown Agents and also separately with the Government to perform and observe during the term assigned or granted to him the covenants by the Lessees and conditions in these presents contained in the same manner as if such covenants and conditions were therein repeated with the substitution of the name of the intended assignee or underlessee for the name of the Lessees and with such other alterations as the circumstances shall render necessary and also containing a provision determining the term thereby assigned or granted on breach of any of the said covenants by the intended assignee or underlessee.

(C) Provided also that upon any assignment of the demised premises or any part thereof being made in accordance with these presents if such Indenture as hereinbefore in this clause mentioned shall have been duly executed by the assignee and delivered to the Crown Agents then the Lessees making the assignment shall thereupon cease to be personally liable under any of the covenants or obligations of these presents so far as the same relate to the premises comprised in such assignment but without prejudice to any right of action or remedy of the Crown Agents or the Government in respect of any antecedent breach by the Lessees of any such covenants or obligations.

(v) If and whenever any excepted mineral (that is to say any mine mineral or mining substance precious stone claim treasure relic antiquity or other similar thing excepted out of the lease hereby made) shall be found in or upon the demised premises the Lessees shall forthwith give notice thereof to the Government and take all reasonable steps for the safe preservation thereof.

To give notice of
finding of any
excepted minerals

vessels being or about to be loaded or unloaded as aforesaid with water and other requisites incidental to loading Soda Goods.

(b) The Lessees shall not use or suffer to be used Shimanzi Pier or any part thereof in any way whereby any harbour dues port dues charges for tugs or pilotage or other lawful charges are or may be evaded.

Provided always that the port dues payable by vessels using Shimanzi Pier and not going alongside any Government wharf pier jetty or quay shall be on the basis fixed for other ships calling at Mombasa Harbour and not going alongside any Government wharf pier jetty or quay.

(c) The Lessees shall not use or suffer to be used Shimanzi Pier or any part thereof so as in any way to enter or attempt to enter into competition with any Government Pier.

To repair and deliver up to Government

(iii) (A) The Lessees shall at all times keep the demised premises and all buildings erections works and fixtures for the time being and from time to time thereon including (by way of description and not of restriction) the Branch Railway in good and substantial repair and condition and working order (except such fixtures and things as the Lessees are by law entitled to remove and such of the same as shall have been abandoned by reason that they have become unnecessary for the further or proper working of the Magadi Soda Deposit) and the same in good and substantial repair and condition and working order deliver up to the Government at the expiration or (subject to the provisions of Clause 10 of these presents) sooner determination of the term hereby granted

Provided always that it shall not be deemed a breach of this clause if the Lessees for the purposes and in the ordinary course of their business demolish or make any alterations to or substitutions for buildings erections works and fixtures on the demised premises.

To permit entry to view and to repair

(B) The Lessees shall permit the Crown Agents or the Government or their respective agents with or without workmen and others from time to time and at any time during the said term at convenient hours in the daytime to enter into and upon the demised premises and to examine the state and condition thereof and shall repair and make good all defects and wants of reparation of which notice in writing shall be given to the Lessees by the Crown Agents or the Government within three months after the giving of such notice.

(iv) (A) The Lessees shall not assign underlet or part with the possession of the demised premises or any part thereof or suffer any corporation (other than the Lessees) or any person to occupy the demised premises or any part thereof as a licensee without the previous consent in writing of the Crown Agents but such consent shall not be unreasonably withheld and this restriction shall not apply to underletting for residential purposes only.

Not to assign without licence

(B) Provided always that the Crown Agents may withhold such consent if the proposed transaction does not form part of a larger transaction which includes as well the premises demised by the Magadi Lease or unless the Lessees shall before the assignment or underlease or any agreement for the same shall be executed deliver to the Crown Agents an Indenture to be prepared by the Solicitors for the time being of the Crown Agents at the cost of the Lessees containing a covenant by the intended assignee or underlessee with the Crown Agents and also separately with the Government to perform and observe during the term assigned or granted to him the covenants by the Lessees and conditions in these presents contained in the same manner as if such covenants and conditions were therein repeated with the substitution of the name of the intended assignee or underlessee for the name of the Lessees and with such other alterations as the circumstances shall render necessary and also containing a provision determining the term thereby assigned or granted on breach of any of the said covenants by the intended assignee or underlessee.

(c) Provided also that upon any assignment of the demised premises or any part thereof being made in accordance with these presents if such Indenture as hereinbefore in this clause mentioned shall have been duly executed by the assignee and delivered to the Crown Agents then the Lessees making the assignment shall thereupon cease to be personally liable under any of the covenants or obligations of these presents so far as the same relate to the premises comprised in such assignment but without prejudice to any right of action or remedy of the Crown Agents or the Government in respect of any antecedent breach by the Lessees of any such covenants or obligations.

(v) If and whenever any excepted mineral (that is to say any mine mineral or mineral substance precious stone coal lignite relic antiquity or other similar thing excepted out of the lease hereby made) shall be found in or upon the demised premises the Lessees shall forthwith give notice thereof to the Government and take all reasonable steps for the safe preservation thereof.

To give notice of finding of any excepted minerals

To comply with Ordinances

Not to interfere with public or private rights

To indemnify Government against claims

Not to exercise of powers

No transfer or alienation to be made

No spirituous liquor to be sold to natives nor imported except for Europeans

(vi) The Lessees shall comply with all obligations which may be imposed on them by any General Ordinance for the time being in force in the Colony.

(vii) In everything done hereunder the Lessees shall interfere with public and private conveniences and rights as little as possible and shall take all such precautions and provide and maintain all such temporary and permanent accommodation works as shall be reasonably required for the prevention of damage or injury to any property or person or for the due preservation or maintenance of any public right or property.

(viii) The Lessees shall be solely responsible for and shall indemnify and keep indemnified the Government against all accidents damages claims and losses which may occur or be incurred or claimed in any way or by reason of anything done upon the demised premises or any part thereof and if the Government shall by reason of the default of the Lessees make any payment in respect of such damages claims or losses then and in every such case the Lessees shall repay to the Government on demand the amount of the money so paid and of the costs incurred thereon by the Government but this clause shall not extend to any accident damage claim or loss which may occur or be incurred or claimed in or by reason of the working of any Railway by the High Commissioner for Transport or authority for the time being and from time to time working or managing the Kenya and Uganda Railway unless the same shall have arisen from some neglect or default of the Lessees.

(ix) The Lessees shall at all times provide and maintain a suitable office at some place on the demised premises where notices may be sent for or addressed to the Lessees.

(x) The Lessees shall not at any time during the term hereby granted sell give barter or otherwise dispose of any arms or ammunition of any description to any native or permit or suffer any such sale gift barter or other disposition to be made by any employee or agent of the Lessees.

(xi) The Lessees shall not at any time during the term hereby granted sell give barter or otherwise dispose of any spirituous liquor to any native or permit or suffer any such sale gift barter or other disposition to be made by any employee or agent of the Lessees or import or authorise the importation of any spirituous liquor into the Colony except for the use of the European Agents or employees of the Lessees and in accordance with and subject to such rules as may from time to time be made by the Governor in that behalf.

(xii) If the Government shall at any time during the term hereby granted incur any expenditure in erecting or maintaining any sanitary works or regulations upon or in the neighbourhood of the demised premises the Lessees shall so far as such expenditure is rendered necessary or increased by the operations of the Lessees or by the presence of the agents or workmen of the Lessees pay to the Government on demand as a contribution towards the said expenditure such proportion as shall be just and equitable in the circumstances such proportion in case of difference to be settled by the Governor.

(xiii) The Lessees shall at all times during the term hereby granted comply with all such requirements and make all such arrangements as may be made or directed by the Government to secure the suitable treatment of native labourers or workmen.

7. The Crown Agents hereby covenant with the Lessees that the Lessees paying the rent hereby reserved and observing and performing the covenants and conditions herein contained upon the Lessees part to be observed and performed shall and may peaceably and quietly possess and enjoy the demised premises during the said term without any lawful interruption from or by the Crown Agents or the Government or any persons rightfully claiming the same or under them.

Provided always that these presents are upon the special conditions following:

(i) The Lessees and any company or corporation becoming by assignment or otherwise entitled to the term hereby granted or any part thereof or to possession of the demised premises and character registered in Great Britain or in a British Colony and having their principal place of business within His Majesty's Dominions and the Chairman and at least four fifths in number of the Directors of the Lessees or any such company or corporation as aforesaid shall at all times be and remain British subjects.

(ii) In the event of any alteration being proposed in the Memorandum or Articles of Association or constitution of the Lessees or any such company or corporation as aforesaid notice thereof shall be given in writing to the Crown Agents who if in their opinion the said alteration shall be contrary to the cardinal principle that the Lessees and any such company or corporation as aforesaid shall be and remain a British Company under British control may refuse their consent to such alteration.

(iii) If and whenever any such alteration shall be made without the written consent of the Crown Agents or if the Chairman and at least four-fifths in number of the Directors thereof shall not be British subjects the Crown Agents may thereupon forthwith by notice served on the Lessees or such company or corporation as aforesaid as the case may be determine the demise hereby made without making any compensation but subject to the provisions of Clause 10 of these presents and without prejudice to any right of action or remedy of the Crown Agents or the Government in respect of any antecedent breach of any of the covenants by the Lessees or conditions herein contained.

9. At the expiration of the term of 99 years hereby granted (but not on the sooner determination of the said term) the demised premises and all the assets and property whatsoever of the Lessees used for the purposes of or in connection with the demised premises shall immediately on the expiration of the said term and free from all payment be and become the property of the Government

10. If the lease shall be determined otherwise than by effluxion of the said term of 99 years the Government shall have the right to purchase the demised premises and all the assets and property whatsoever of the Lessees used for the purposes of or in connection with the demised premises or any part thereof at the price hereinafter mentioned or a proportionate part thereof upon giving to the Lessees one month's notice in writing in that behalf such notice to be given within one month after the determination of the Lease. If such notice be not given or if such notice be given in regard to part only of the property and assets of the Lessees as aforesaid the Lessees shall be entitled within twelve months from the determination of the Lease to remove the Magadi Pier and Depot Works and the assets and property of the Lessees as aforesaid or such parts thereof as are not included in any such notice.

11. The Government shall have the right at any time during the continuance of the term hereby granted to purchase the demised premises or any part thereof and all the assets and property whatsoever of the Lessees used for the purposes of or in connection with the demised premises and all the interest of the Lessees under these presents at the price hereinafter mentioned or a proportionate part thereof upon giving to the Lessees one year's notice in writing in that behalf.

12. If the Government shall exercise this present right then from and after the completion of the purchase until the expiration or sooner

At the end of 99 years term the demised premises and all assets to belong to the Government

Option to Government to purchase or determine

Option to Government to purchase at any time

If option exercised the Lessees to have certain rights

determination of the Magadi Lease the Lessees shall be entitled to the following rights and privileges:

- (A) The right without payment to use and work for the purpose of the Lessees' own business in connection with the working of the said deposits of Carbonate of Soda under the Magadi Lease any lines of electric telegraphs and telephone on the demised premises at the date of the notice exercising the said options.
- (B) The right to have the same facilities over the Branch Railway as though the same were still in their possession.
- (C) The right to use the rest of the demised premises for controlling storing loading and unloading in connection with soda goods as though the same were still in their possession.

12. The price payable by the Government upon a purchase under the exercise of either of the aforesaid rights shall be the aggregate of the two following sums, namely:—

- (A) The sum of £71,477, 13s. 6d. being the agreed amount of the capital outlay made by the Lessees or the Company whose assets the Lessees have acquired on the construction of the Magadi Pier and Depot Works prior to the date hereof.
- (B) All sums expended by the Lessees after the date hereof and prior to the date of the notice exercising the option upon additions or betterments.

Provided that in determining the price payable by the Government at the beginning of any year there shall be deducted in respect of depreciation a sum equal to one per centum of the price payable by the Government at the beginning of the previous year.

13. The option of purchase conferred by Clauses 10 and 11 hereof shall not extend to any land which may have been acquired by the Lessees under Clause 15 (iii) of the Railway Lease other than that which is at the date of notice being given to exercise the said option being used for the purposes of the demised premises.

14. The rights of purchase hereinbefore conferred on the Government are without prejudice to all or any other rights of the Crown Agents or the Government under or by virtue of these presents.

15. (a) Every debenture or other instrument hereafter issued creating or purporting to create any charge upon the demised premises or any part thereof or upon any other asset or property of the Lessees subject to the rights of purchase aforesaid shall contain or have endorsed thereon notice of the said rights of purchase.

Limit on options to purchase

Rights of purchase not to prejudice other rights

Notice of rights of purchase to be given to incumbents

(iii) If and whenever any such alteration shall be made without the written consent of the Crown Agents or if the Chairman and at least four-fifths in number of the Directors thereof shall not be British subjects the Crown Agents may thereupon forthwith by notice served on the Lessees or such company or corporation as aforesaid as the case may be determine the demise hereby made without making any compensation but subject to the provisions of Clause 10 of these presents and without prejudice to any right of action or remedy of the Crown Agents or the Government in respect of any antecedent breach of any of the covenants by the Lessees or conditions herein contained.

At the end of 99 years' term the demised premises and all assets to belong to the Government

9. At the expiration of the term of 99 years hereby granted (but not on the sooner determination of the said term) the demised premises and all the assets and property whatsoever of the Lessees used for the purposes of or in connection with the demised premises shall immediately on the expiration of the said term and free from all payment be and become the property of the Government

Option to Government to purchase or cause determination

10. If this lease shall be determined otherwise than by effluxion of the said term of 99 years the Government shall have the right to purchase the demised premises and all the assets and property whatsoever of the Lessees used for the purposes of or in connection with the demised premises or any part thereof at the price hereinafter mentioned or a proportionate part thereof upon giving to the Lessees one month's notice in writing in that behalf such notice to be given within one month after the determination of the Lease. If such notice be not given or if such notice be given in regard to part only of the property and assets of the Lessees as aforesaid the Lessees shall be entitled within twelve months from the determination of the Lease to remove the Magadi Pier and Depot Works and the assets and property of the Lessees as aforesaid or such parts thereof as are not included in any such notice.

Option to Government to purchase or cause determination

11. (i) The Government shall have the right at any time during the continuance of the term hereby granted to purchase the demised premises or any part thereof and all the assets and property whatsoever of the Lessees used for the purposes of or in connection with the demised premises and all the interest of the Lessees under these presents at the price hereinafter mentioned or a proportionate part thereof upon giving to the Lessees one year's notice in writing in that behalf.

If option exercised the Lessees to have certain rights

(ii) If the Government shall exercise this present right then from and after the completion of the purchase until the expiration or sooner

determination of the Magadi Lease the Lessees shall be entitled to the following rights and privileges:

- (A) The right without payment to use and work for the purpose of the Lessees' own business in connection with the working of the said deposits of Carbonate of Soda under the Magadi Lease any lines of electric telegraphs and telephone on the demised premises at the date of the notice exercising the said options.
- (B) The right to have the same facilities over the Branch Railway as though the same were still in their possession.
- (C) The right to use the rest of the demised premises for controlling storing loading and unloading in connection with soda goods as though the same were still in their possession.

12. The price payable by the Government upon a purchase under the exercise of either of the aforesaid rights shall be the aggregate of the two following sums, namely:

- (A) The sum of £71,477. 13s. 6d. being the agreed amount of the capital outlay made by the Lessees or the Company whose assets the Lessees have acquired on the construction of the Magadi Pier and Depot Works prior to the date hereof.
- (B) All sums expended by the Lessees after the date hereof and prior to the date of the notice exercising the option upon additions or betterments.

Provided that in determining the price payable by the Government at the beginning of any year there shall be deducted in respect of depreciation a sum equal to one per centum of the price payable by the Government at the beginning of the previous year.

13. The option of purchase conferred by Clauses 10 and 11 hereof shall not extend to any land which may have been acquired by the Lessees under Clause 15 (iii) of the Railway Lease other than that which is at the date of notice being given to exercise the said option being used for the purposes of the demised premises.

Limit on options to purchase

14. The rights of purchase hereinbefore conferred on the Government are without prejudice to all or any other rights of the Crown Agents or the Government under or by virtue of these presents.

Rights of purchase not to prejudice other rights

15. (i) Every debenture or other instrument hereafter issued creating or purporting to create any charge upon the demised premises or any part thereof or upon any other asset or property of the Lessees subject to the rights of purchase aforesaid shall contain or have endorsed thereon notice of the said rights of purchase.

Notice of rights of purchase to be given to incumbrancers

Property to be transferred free from incumbrances

(ii) All and every the demised premises, assets and property purchased by the Government as aforesaid shall be conveyed, transferred or delivered to the Government on completion of the purchase free from incumbrances.

Members or Officers of Government not to be personally liable

16. No member or officer of the Government or the Crown Agents shall be in any way bound personally for the acts and obligations of the Government under these presents or answerable for any default or omission in the observance or performance of any of the acts, matters or things which are hereby made obligatory on the Government or the Crown Agents.

Certificate of the Governor

17. A certificate issued by the Governor shall be conclusive evidence of any order, requirement, determination or appointment of the Government mentioned in such certificate.

Notice to be given to Lessees

18. Every approval, consent or notice to be given or served by or on behalf of the Government or the Crown Agents for the purposes of these presents shall be in writing under the hand of the Governor or of the Crown Agents or one of them or any person authorised on their behalf or of the General Manager and shall either be delivered or left for the Lessees at the office hereinbefore covenanted to be provided or at their registered office for the time being in England or at their principal or last known place of business in the Colony.

Exceptions

19. Except in cases (if any) in which these presents expressly provide to the contrary no failure or omission by the Lessees in the observance or performance of any of the stipulations, agreements or conditions herein contained and on the part of the Lessees to be observed or performed shall give rise to any claim or demand against the Lessees or in any manner operate to the prejudice of the Lessees or be deemed a breach of any covenant or obligation on the part of the Lessees hereunder whether expressed or implied if it be shown to the reasonable satisfaction of the Governor that the default has arisen from any of the following causes namely: the act of God, insurrection, riots, war, strikes or combinations or lockouts of workmen not properly attributable to the improper acts or defaults of the Lessees or any other circumstances whether *ejusdem generis* with the foregoing circumstances or not which in the opinion of the Governor may be beyond the reasonable control of the Lessees and it and so far as anything which the Lessees hereby agree to do within any specified time shall be delayed by any such cause, the specified time shall be proportionately extended.

20. (i) In case and so often as any dispute, difference or question shall arise between the parties hereto or any Government, Corporation, Company or person claiming through or under them, respectively or between any of such parties, Governments, Corporations, Companies or persons concerning or relating to the subject matter of these presents or any part thereof or the construction, meaning or effect of these presents or of any award made in pursuance hereof or any clause or thing contained herein or in any such award as aforesaid or the rights or liabilities of any party hereto or of any such Government, Corporation, Company or person as aforesaid hereunder or under any such award as aforesaid then (except in any case and as to any matter for which other provision is herein made) the subject of every such dispute, difference or question shall in every case on the demand in writing of either party be referred to the arbitration and award of an umpire if the parties can agree to the arbitration and in case they cannot so agree then of two arbitrators one to be appointed by each party to the reference and an umpire to be appointed by the two arbitrators or (if such two arbitrators fail for one month after their appointment to appoint an umpire) by His Majesty's Secretary of State for the Colonies for the time being. The decision of such umpire or arbitrators as the case may be shall be final and without appeal and binding upon all parties. If either party to any dispute, difference or question make default in appointing an arbitrator within three months after the other party has given him or them notice to appoint the same the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference and his award shall be final and binding upon all parties and all the provisions herein contained with reference to the proceedings of two arbitrators and an umpire shall *mutatis mutandis* be applicable to such sole arbitrator.

Provision for arbitration

(ii) The arbitrators and umpire shall have full power to make if they or he think fit several awards instead of one award and every such award though not on the whole matter shall be final so far as it extends and as if the matter awarded on were the whole matter referred.

Arbitrators may make partial awards

(iii) The arbitrators and umpire shall have full power to proceed in the absence of both or either parties after giving to such parties such notice as the arbitrators or umpire may think sufficient of their or his intention to proceed.

May proceed *ex parte*

(iv) The arbitrators and umpire shall have full power to inspect the books, documents and accounts of both parties and examine on oath or affirmation or on statutory declaration in lieu of oath the officers, agents, servants and witnesses of the parties respectively.

May inspect books and accounts and examine on oath

(v) The costs of the reference and award shall be in the discretion of the arbitrators and umpire and such costs may be awarded as between solicitor and client.

And provide for costs

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KENYA COLONY AND PROTECTORATE

THE MAGADI SODA COMPANY LIMITED
AND ANOTHER

TO

THE CROWN AGENTS FOR THE COLONIES

Surrender

DATED 20th MARCH 1925

SUTTON, OMMANNEY & OLIVER,

3 & 4 Great Winchester Street,

London, E.C.2

101

KENYA COLONY AND PROTECTORATE.

This Indenture made the Twentieth day of March 1928
Between THE BRITISH TRUSTS ASSOCIATION
LIMITED whose registered office is situate at No. 32 Bishopsgate
in the City of London (hereinafter called "the Association") of
the first part THE MAGADI SODA COMPANY LIMITED
in liquidation whose registered office is situate at Nos. 25 &
27 Bishopsgate aforesaid (hereinafter called "the Company")
of the second part and THE CROWN AGENTS FOR THE
COLONIES (hereinafter called "the Crown Agents") acting for
and on behalf of The Government of the Kenya Colony and
Protectorate of the third part.

Whereas---

(1) These presents are made supplemental to the following
Indentures that is to say---

- (a) an Indenture (hereinafter called "the Magadi Lease") dated
the 12th day of April 1911 and made between the then
Crown Agents of the one part and the Company of lands situate
at or near Lake Magadi in the said Kenya Colony and
Protectorate (then the East Africa Protectorate) with
mining rights in respect of all soda and other deposits
minerals and precious stones therein for a term except as
to mining rights in respect of minerals other than soda and
other similar deposits) of 99 years from the date thereof and
as to such excepted rights until the 15th day of August 1946

101

KENYA COLONY AND PROTECTORATE.

This Indenture made the Twentieth day of March 1928
Between THE BRITISH TRUSTS ASSOCIATION
LIMITED whose registered office is situate at No. 32 Bishopsgate
in the City of London (hereinafter called "the Association") of
the first part THE MAGADI SODA COMPANY LIMITED
in liquidation whose registered office is situate at Nos. 25 &
27 Bishopsgate aforesaid (hereinafter called "the Company")
of the second part and THE CROWN AGENTS FOR THE
COLONIES (hereinafter called "the Crown Agents") acting for
and on behalf of The Government of the Kenya Colony and
Protectorate of the third part.

Whereas,—

(1) These presents are made supplemental to the following
Indentures that is to say

- (a) an Indenture (hereinafter called "the Magadi Lease") dated
the 12th day of April 1911 and made between the then
Crown Agents of the one part and the Company of lands situate
at or near Lake Magadi in the said Kenya Colony and
Protectorate (then the East Africa Protectorate) with
mining rights in respect of all soda and other deposits,
minerals and precious stones therein for a term (except as
to mining rights in respect of minerals other than soda and
other similar deposits) of 99 years from the date thereof and
as to such excepted rights until the 15th day of August 1946

as the royalties and subject to the covenants by the lessee and conditions therein reserved and contained

(b) an Indenture hereinafter called "the Railway Contract" dated the 13th day of April 1911 and made between the then Crown Agents of the one part and the Company of the other part being a contract for the construction by the Company of (i) a pier and works at Kilindini and (ii) a railway to Lake Magadi aforesaid and for grant to the Company of a lease of the said railway to be constructed being the Indenture next hereinafter mentioned

(c) an Indenture hereinafter called "the Railway Lease" dated the 3rd day of March 1923 and made between the Crown Agents of the one part and the Company of the other part being a lease to the Company of the said railway during such term as the Magadi Lease should be subsisting at the time and subject to the covenants by the lessee and conditions therein reserved and contained

(d) an Indenture hereinafter called "the Trust Deed" dated the 19th day of May 1919 and made between the Company of the one part and the Association of the other part being a trust deed to secure debentures to the aggregate nominal amount of £200,000 then about to be and since in part issued by the Company whereby the Company charged in favour of the Association as and by way of a floating security the whole of its undertaking and property for the time being whatsoever and whatsoever exclusive of any uncalled capital with the payment of all moneys intended to be thereby secured

(2) The Railway Lease and the counterpart thereof have been executed but have not yet been exchanged

(3) The security constituted by the Trust Deed some time since became enforceable and thereupon the floating charge contained in the Trust Deed crystallised and became a specific charge upon (inter alia) the property hereby surrendered and assigned

(4) By an Order of the High Court of Justice (Companies Winding-up) made on the 8th day of April 1924 it was ordered that the Company should be wound up by the Court under the provisions of the Companies (Consolidation) Act 1908 and Herbert Edward Burgess the Senior Official Receiver in Companies Liquidation is the Liquidator of the Company

(5) By a further Order of the said High Court of Justice made on the 20th day of December 1924 a Scheme of Arrangement between the Company and its Debenture Holders Unsecured Creditors and Shareholders was duly sanctioned

(6) The Association and the Company have agreed to execute such surrender and assignment and the Crown Agents have agreed to execute such release as is hereinafter contained

Now this Indenture witnesseth as follows

1. In pursuance of the said Agreement and in consideration of the release hereinafter contained the Association as Mortgagee and according to its estate and interest and in pursuance of the said Scheme of Arrangement and the powers in this behalf conferred by the said Trust Deed and of all other powers it hereunto enabling and at the request of the Company hereby surrenders and assigns and the Company hereby surrenders and assigns unto the Crown Agents

First all the premises comprised in and demised by the Magadi Lease and the Railway Lease respectively

AND SECONDLY all the right interest and benefit of the Company under the Railway Contract

To the intent that the terms granted by the Magadi Lease and the Railway Lease shall forthwith merge and be extinguished in the fee simple and inheritance and that the Railway Contract and all rights thereunder shall be at an end and determined

2. In further pursuance of the said Agreement and in consideration of the surrender and assignment herebefore made the Crown Agents hereby release the Company from all claims and demands under the Magadi Lease the Railway Contract and the Railway Lease or any of them.

In Witness whereof the Association and the Company have caused their respective Common Seals to be herunto affixed and one of the Crown Agents hereunto set his hand and seal the day and year first above written.

The Common Seal of THE BRITISH TRUSTS ASSOCIATION LIMITED was herunto affixed in the presence of

L.S.

W. S. POOLE *Director*

A. E. G. TOPHAM *Secretary*

The Common Seal of THE MAGADI SODA COMPANY LIMITED in liquidation was herunto affixed in the presence of

L.S.

H. E. BURGESS *Liquidator*

Witnessed, Sealed and Delivered by Sir HENRY CHARLES MILNE LAMBERT one of the Crown Agents for the Company in the presence of

HENRY LAMBERT

L.S.

W. A. J. WICKHART

Crown Agents Office

C.O. 533 / 385
ALTY WITHOUT PERMISSION OF THE
PUBLIC RECORD OFFICE, LONDON

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KENYA COLONY AND PROTECTORATE.

This Surrender

Made the Twentieth day of March One thousand nine hundred and twenty eight B E T W E E N THE BRITISH TRUSTS ASSOCIATION LIMITED whose registered office is situate at No. 32, Bishopsgate in the City of London (hereinafter called "the Association") of the first part THE MAGADI SODA COMPANY LIMITED in liquidation whose registered office is situate at Nos. 25 and 27, Bishopsgate aforesaid (hereinafter called "the Company") of the second part and HIS MOST GRACIOUS MAJESTY KING GEORGE THE FIFTH (hereinafter referred to as "His Majesty" which expression shall where the context so admits include His heirs and successors) of the third part.

W H E R E A S :-

- (1) This surrender is supplemental to the following Indentures that is to say:-
 - (a) An Indenture (hereinafter called "the Trust Deed") dated the Sixteenth day of May One thousand nine hundred and nineteen and made between the Company of the one part and the Association of the other part being a trust deed to secure debentures to the aggregate nominal amount of Five hundred thousand pounds then about to be and since in part issued by the Company whereby the Company charged in favour of the Association as and by way of a floating security the whole of its undertaking and property for the time being whatsoever and wheresoever exclusive of any uncalled capital with the payment of all moneys intended to be thereby secured.
 - (b) An Indenture of Lease (hereinafter referred to as "the Lease") dated the Twenty second day of October One thousand nine hundred and nineteen and made between His

Majesty of the one part and the Company of the other part being a lease of ALL THAT piece or parcel of land situate at or near Kilindini on the Island of Mombasa in the Mombasa District of the Seyidie Province of the East Africa Protectorate containing 13.65 acres or thereabouts be the same more or less which said piece or parcel of land is more particularly delineated and described on the plan annexed to the Lease and thereon bordered with red for a term of ninety nine years from the Twelfth day of April One thousand nine hundred and eleven at the yearly rent of one peppercorn if demanded.

(2) The security constituted by the Trust Deed some time since became enforceable and thereupon the floating charge contained in the Trust Deed crystallised and became a specific charge upon (inter alia) the property hereby surrendered and assigned.

(3) By an Order of the High Court of Justice (Companies Winding Up) made on the Eighth day of April One thousand nine hundred and twenty four it was ordered that the Company should be wound up by the Court under the provisions of the Companies (Consolidation) Act 1908 and Herbert Edward Burgess the Senior Official-Receiver in Companies Liquidation is the Liquidator of the Company.

(4) By a further Order of the said High Court of Justice made on the Twentieth day of December One thousand nine hundred and twenty four a Scheme of Arrangement between the Company and its Debenture Holders Unsecured Creditors and Shareholders was duly sanctioned.

(5) The Association and the Company have agreed to execute such surrender and assignment as is hereinafter contained.

IN WITNESS THIS DEED WITNESSETH that in pursuance of the

said agreement and in consideration of the premises the Association as Mortgagee and according to its estate and interest and in pursuance of the said Scheme of Arrangement and the powers in this behalf conferred by the said Trust Deed and of all other powers it hereunto enabling and at the request of the Company hereby surrenders and assigns and the Company hereby surrenders and assigns unto His Majesty ALL AND SINGULAR the hereditaments and premises comprised in and demised by the Lease TO HOLD the same unto and to the use of His Majesty his heirs and successors from the date hereof for all the residue now unexpired of the term of Ninety nine years created by the Lease to the intent that the said term may merge and be extinguished in the freehold and inheritance of the said hereditaments and premises.

IN WITNESS whereof, the Association and the Company have caused their respective Common Seals to be hereunto affixed the day and year first above written.

THE COMMON SEAL of the British Trusts Association Limited was hereunto affixed in the presence of

(L.S)

W.S. Poole. Director
A.E.G. Topham. Secretary

THE COMMON SEAL of the Magadi Soda Company Limited in liquidation was hereunto affixed in the presence of

(L.S)

H.E. Burgess. Liquidator

C.O. 513 385 PUBLIC RECORD OFFICE, LONDON

DATED 20th March 1928.

KENYA COLONY AND PROTECTORATE

THE HAGADI SODA COMPANY LTD. and
Another.

to

HIS MOST GRACIOUS MAJESTY KING
GEORGE THE FIFTH.

Osgy,

Surrender

DATED 20th March 1928.

KENYA COLONY AND PROTECTORATE

THE MAGADI SODA COMPANY LTD. and
Another.

to

HIS MOST GRACIOUS MAJESTY KING
GEORGE THE FIFTH.

Q&A,

Surrender

KENYA COLONY AND PROTECTORATE.

Lease

OF

RAILWAY TO LAKE MAGADI.

DATED 20TH MARCH, 1928.

SUTTON, OSMANNEY & OLIVER,
1 & 4 Great Winchester Street,
London, E.C.2.

C.O. 533 / 385

KENYA COLONY AND PROTECTORATE.

Lease

OF

RAILWAY TO LAKE MAGADI.

DATED 20TH MARCH, 1928.

SUTTON, OSBANNEN & OLIVER,
1 & 4 Great Winchester Street,
London, E.C.2.

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KENYA COLONY AND PROTECTORATE.

Lease

OF

RAILWAY TO LAKE MAGADI.

DATED 20TH MARCH, 1928.

SUTTON, OSMANNEY & OLIVER,

3 & 4 Great Winchester Street,

London, E.C.2.

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COLONY OF KENYA.

REGISTRY OF TITLES.

(DISTRICT).

TITLE No.

ANNUAL RENT Shs. 5/-.

TERM 99 years from 1.11.1924 to 31.10.2023.

Know all Men by these presents that for the consideration hereinafter expressed I, EDWARD WILLIAM MACLEAY GRIGG, Knight Commander of the Royal Victoria Order, Companion of the Most Distinguished Order of Saint Michael and Saint George, Companion of the Distinguished Service Order upon whom His Majesty has conferred the decoration of the Military Cross, Lieutenant-Colonel in His Majesty's Army (retired) the GOVERNOR and Commander-in-Chief of the Colony and Protectorate of Kenya on behalf of HIS MOST GRACIOUS MAJESTY KING GEORGE THE FIFTH do hereby under and by virtue of the powers vested in me Grant unto the MAGADI SODA COMPANY LIMITED a Company incorporated pursuant to the laws of England under the Companies Acts 1908 to 1917 and having its registered office situate at Broadway Building 50/64 Broadway in the City of Westminster (hereinafter referred to as "the Lessees" which expression shall where the context so admits include their successors and permitted assigns) All that piece of land situate to the East of Lake Magadi in the Masai Province of the said Colony containing by measurement two thousand two hundred and nine acres more or less that is to say Land Office Number 2341 of Meridional District South A 27 G & H together with the Railway running there-through and being thereon which piece of land and railway with the dimensions abutments and boundaries thereof is delineated on the plan drawn on these presents and more

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particularly on Land Survey Plan Number 22640 deposited in the Land Surveys Office at Nairobi Excepting nevertheless out of the grant hereby made and reserving unto the Governor as is more particularly in the Schedule hereto excepted and reserved TO HOLD for the term of ninety-nine years from the First day of November One thousand nine hundred and twenty-four Subject to the payment therefor for the said term the annual rent of Shillings Five payable in advance on the First day of January in every year and so in proportion for any less period than one year to the provisions and conditions contained in the Crown Lands Ordinance One thousand nine hundred and fifteen (excepting Part Eleven thereof except as is herein otherwise provided) to the Registration of Lands Ordinance One thousand nine hundred and nineteen and also to the special conditions contained in the Schedule hereto.

IN WITNESS whereof I the said Governor have hereto set my hand and the Seal of the Colony at Nairobi this _____ day of _____ One thousand nine hundred and twenty _____ in the presence of _____

[SCHEDULE.]

3
Schedule.

KENYA COLONY AND PROTECTORATE.

This Indenture made the Twentieth day of March 1928

Between THE CROWN AGENTS FOR THE COLONIES (hereinafter referred to as "the Crown Agents") acting for and on behalf of the Government of the Kenya Colony and Protectorate (hereinafter referred to as "the Government") of the one part and the MAGADI SODA COMPANY LIMITED a Company incorporated pursuant to the laws of England under the Companies Acts 1908 to 1917 and having their registered office situate at Broadway Buildings 50/64 Broadway in the City of Westminster (hereinafter referred to as "the Lessees" which expression shall where the context so admits include their successors and permitted assigns) of the other part

And whereas by an Indenture (hereinafter called "the Magadi Lease") bearing even date with and executed before these presents and made between the same parties as are parties hereto and in the same order the lands known as "Lake Magadi" have been demised to the Lessees for a term of Ninety-nine years from the 1st day of November 1924 subject to the payment of the rent and royalties thereby reserved and the covenants on the part of the Lessees and the conditions therein contained for the purpose of working the deposits of carbonate of soda therein

Lease of Magadi Soda Deposits

And whereas for the purpose of working the said deposits the Lessees or the Company whose assets they have acquired have at their own expense constructed the Railway hereby demised and the Magadi Pier and Depot Works hereinafter defined upon lands provided by the Government

Construction of the Railway and the Magadi Pier and Depot Works

And whereas by an Indenture (hereinafter called "the Port Lease") already prepared and engrossed and intended to bear even date with and to be executed immediately after these presents and

The Port Lease

2
particularly on Land Survey Plan Number 22640 deposited in the Land Surveys Office at Nairobi Excepting nevertheless out of the grant hereby made and reserving unto the Governor as is more particularly in the Schedule hereto excepted and reserved TO HOLD for the term of ninety-nine years from the First day of November One thousand nine hundred and twenty-four Subject to the payment therefor for the said term the annual rent of Shillings Five payable in advance on the First day of January in every year and so in proportion for any less period than one year to the provisions and conditions contained in the Crown Lands Ordinance One thousand nine hundred and fifteen (excepting Part Eleven thereof and except as is herein otherwise provided) to the Registration of Titles Ordinance One thousand nine hundred and nineteen and also to the special conditions contained in the Schedule hereto.

IN WITNESS whereof I the said Governor have hereunto set my hand and the Seal of the Colony at Nairobi this
day of One thousand
nine hundred and twenty. in the
presence of

[SCHEDULE.]

3
Schedule.

KENYA COLONY AND PROTECTORATE.

This Indenture made the Twentieth day of March 1928

Between THE CROWN AGENTS FOR THE COLONIES (hereinafter referred to as "the Crown Agents") acting for and on behalf of the Government of the Kenya Colony and Protectorate (hereinafter referred to as "the Government") of the one part and the MAGADI SODA COMPANY LIMITED a Company incorporated pursuant to the laws of England under the Companies Acts 1908 to 1917 and having their registered office situate at Broadway Buildings 50/64 Broadway in the City of Westminster (hereinafter referred to as "the Lessees" which expression shall where the context so admits include their successors and permitted assigns) of the other part

And whereas by an Indenture (hereinafter called "Magadi Lease") bearing even date with and executed before the presents and made between the same parties as are parties hereto and in the same order the lands known as "Lake Magadi" have been demised to the Lessees for a term of Ninety-nine years from the 1st day of November 1924 subject to the payment of the rent and royalties thereby reserved and the covenants on the part of the Lessees and the conditions therein contained for the purpose of working the deposits of carbonate of soda therein

And whereas for the purpose of working the said deposits the Lessees or the Company whose assets they have acquired have at their own expense constructed the Railway hereby demised and the Magadi Pier and Depot Works hereinafter defined upon lands provided by the Government

And whereas by an Indenture (hereinafter called "the Port Lease") already prepared and engrossed and intended to bear even date with and to be executed immediately after these presents and

made between the same parties as are parties hereto and in the same order the Magadi Pier and Depot Works hereinafter defined are intended to be demised to the Lessees from the said 1st day of November 1924 for a term of 99 years subject to payment of the premium and rent thereby reserved and the covenants on the part of the Lessees and conditions therein contained

And whereas the said Railway hereby demised is now being and is intended to be worked and controlled by the High Commissioner for Transport hereinafter defined as part of the Kenya and Uganda Railway

And whereas the Government have agreed to grant and the Lessees have agreed to take a lease of the said Railway and it has been agreed that the same shall be in the form of these presents and shall contain such covenants and provisions as hereinafter contained

Now this Indenture witnesseth and it is hereby agreed and declared as follows :-

1. In these presents the following expressions or terms shall have the following meanings respectively :-

- (A) "The Colony" means the Kenya Colony and Protectorate.
- (B) "The Government" means the Government for the time being of the Colony.
- (C) "The Governor" means the Governor for the time being of the Colony or the person for the time being acting as such.
- (D) "The High Commissioner for Transport" means the High Commissioner for Transport for the Colony and Protectorate of Kenya and the Protectorate of Uganda.
- (E) "The Railway" means the railway hereby demised together with all works apparatus and conveniences to be made or supplied in connection therewith.
- (F) "The Lessees' Manager" means the person appointed by the Lessees to manage their business in the Colony.
- (G) "The General Manager" means the General Manager for the time being of the Kenya and Uganda Railway.
- (H) "The Magadi Lease" means the first before recited Lease of even date herewith.

(I) "The Best Lease" means the second before recited Lease of even date.

(J) "The Magadi Soda Deposit" means the deposits of carbonate of soda and/or carbonate of soda mixed with any other salts included in and demised by the Magadi Lease.

(K) "The Magadi Pier and Depot Works" means the pier, depot, works, conveniences and siding at or near Kilindini included in and intended to be demised by the secondly before recited Lease of even date herewith.

Extract from Clause I of the Magadi Railway Lease, dated 20th March 1924

(L) "Soda Goods" means all or any of the following :-

- (i) "Raw Soda" that is to say carbonate of soda and/or carbonate of soda mixed with any other salts as obtained from the Magadi Soda Deposit before calcination.
- (ii) "Soda" that is to say soda ash, carbonate of soda and/or other salts of soda as obtained from raw soda as above mentioned.
- (iii) "Soda products" that is to say soda crystals, caustic soda, bicarbonate of soda and/or any other commodities or preparations which are recognised as soda products in the chemical industry.
- (iv) "Manufactured soda" that is to say manufactured articles or merchandise of which soda or soda products as above mentioned respectively form the essential or main constituents.

(M) "Month" means calendar month.

2. The Crown Agents for and on behalf of the Government hereby grant and demise to the Lessees All that piece of land situate to the East of Lake Magadi in the Masai Province of the Colony containing by admeasurement 2,209 acres more or less that is to say L.O. No. 2341 of Meridional District South A 37 G & H together with the railway running therethrough and being thereon which said piece of land and railway is delineated on the plan drawn on these presents and more particularly on Land Survey Plan No. 22640 deposited in the Land Surveys Office at Nairobi

Together with full and free right and liberty for the Lessees to construct maintain renew repair and use any telegraph or telephone line or lines for the purposes of the Lessees' own business in connection with the Railway and the working of the Magadi Soda Deposit or either

Demise of Railway to Lessees

Liberty to Lessees to construct telegraph and telephone lines

made between the same parties as are parties hereto and in the same order the Magadi Pier and Depot Works hereinafter defined are intended to be demised to the Lessees from the said 1st day of November 1924 for a term of 99 years subject to payment of the premium and rent thereby reserved and the covenants on the part of the Lessees and conditions therein contained

And whereas the said Railway hereby demised is now being and is intended to be worked and controlled by the High Commissioner for Transport hereinafter defined as part of the Kenya and Uganda Railway

And whereas the Government have agreed to grant and the Lessees have agreed to take a lease of the said Railway and it has been agreed that the same shall be in the form of these presents and shall contain such covenants and provisions as hereinafter contained

Now this Indenture witnesseth and it is hereby agreed and declared as follows —

Interpretation

1. In these presents the following expressions or terms shall have the following meanings respectively —

- (A) "The Colony" means the Kenya Colony and Protectorate.
- (B) "The Government" means the Government for the time being of the Colony.
- (C) "The Governor" means the Governor for the time being of the Colony or the person for the time being acting as such.
- (D) "The High Commissioner for Transport" means the High Commissioner for Transport for the Colony and Protectorate of Kenya and the Protectorate of Uganda.
- (E) "The Railway" means the railway hereby demised together with all works apparatus and conveniences to be made or supplied in connection therewith.
- (F) "The Lessees' Manager" means the person appointed by the Lessees to manage their business in the Colony.
- (G) "The General Manager" means the General Manager for the time being of the Kenya and Uganda Railway.
- (H) "The Magadi Lease" means the first before recited Lease of even date herewith.

(I) "The First Lease" means the second before recited Lease of even date.

(J) "The Magadi Soda Deposit" means the deposits of carbonate of soda and/or carbonate of soda mixed with any other salts included in and demised by the Magadi Lease.

(K) "The Magadi Pier and Depot Works" means the pier, depot, works, conveniences and siding at or near Kilindini included in and intended to be demised by the secondly before recited Lease of even date herewith.

Extract from Clause I of the Magadi Railway Lease, dated 20th March 1924

(L) "Soda Goods" means all or any of the following:—

- (i) "Raw Soda" that is to say carbonate of soda and/or carbonate of soda mixed with any other salts as obtained from the Magadi Soda Deposit before calcination.
- (ii) "Soda" that is to say soda ash, carbonate of soda and/or other salts of soda as obtained from raw soda as above mentioned.
- (iii) "Soda products" that is to say soda crystals, caustic soda, bicarbonate of soda and/or any other commodities or preparations which are recognised as soda products in the chemical industry.
- (iv) "Manufactured soda" that is to say manufactured articles or merchandise of which soda or soda products as above mentioned respectively form the essential or main constituents.

(M) "Month" means calendar month.

2. The Crown Agents for and on behalf of the Government hereby grant and demise to the Lessees All that piece of land situate to the East of Lake Magadi in the Masai Province of the Colony containing by admeasurement 2,209 acres more or less that is to say L.O. No. 2341 of Meridional District South A 37 together with the railway running G & H therethrough and being thereon which said piece of land and railway is delineated on the plan drawn on these presents and more particularly on Land Survey Plan No. 22640 deposited in the Land Surveys Office at Nairobi

Together with full and free right and liberty for the Lessees to construct maintain renew repair and use any telegraph or telephone line or lines for the purposes of the Lessees' own business in connection with the Railway and the working of the Magadi Soda Deposit or either

Demise of Railway to Lessees

Liberty to Lessees to construct telegraph and telephone lines

made between the same parties as are parties hereto and in the same order the Magadi Pier and Depot Works hereinafter defined are intended to be demised to the Lessees from the said 1st day of November 1924 for a term of 99 years subject to payment of the premium and rent thereby reserved and the covenants on the part of the Lessees and conditions therein contained

And whereas the said Railway hereby demised is now being and is intended to be worked and controlled by the High Commissioner for Transport hereinafter defined as part of the Kenya and Uganda Railway

And whereas the Government have agreed to grant and the Lessees have agreed to take a lease of the said Railway and it has been agreed that the same shall be in the form of these presents and shall contain such covenants and provisions as hereinafter contained

Now this Indenture witnesseth and it is hereby agreed and declared as follows

Interpretation

1. In these presents the following expressions or terms shall have the following meanings respectively

- (a) "The Colony" means the Kenya Colony and Protectorate.
- (b) "The Government" means the Government for the time being of the Colony.
- (c) "The Governor" means the Governor for the time being of the Colony or the person for the time being acting as such.
- (d) "The High Commissioner for Transport" means the High Commissioner for Transport for the Colony and Protectorate of Kenya and the Protectorate of Uganda.
- (e) "The Railway" means the railway hereby demised together with all works apparatus and conveniences to be made or supplied in connection therewith.
- (f) "The Lessees' Manager" means the person appointed by the Lessees to manage their business in the Colony.
- (g) "The General Manager" means the General Manager for the time being of the Kenya and Uganda Railway.
- (h) "The Magadi Lease" means the first before recited Lease of even date herewith.

(i) "The First Lease" means the second before recited Lease of even date.

(j) "The Magadi Soda Deposit" means the deposits of carbonate of soda and/or carbonate of soda mixed with any other salts included in and demised by the Magadi Lease.

(k) "The Magadi Pier and Depot Works" means the pier, depot, works, conveniences and siding at or near Kilindini included in and intended to be demised by the secondly before recited Lease of even date herewith.

(l) "Soda Goods" means all or any of the following:—

(i) "Raw Soda" that is to say carbonate of soda and/or carbonate of soda mixed with any other salts as obtained from the Magadi Soda Deposit before calcination.

(ii) "Soda" that is to say soda ash, carbonate of soda and/or other salts of soda as obtained from raw soda as above mentioned.

(iii) "Soda products" that is to say soda crystals, caustic soda, bicarbonate of soda and/or any other commodities or preparations which are recognised as soda products in the chemical industry.

(iv) "Manufactured soda" that is to say manufactured articles or merchandise of which soda or soda products as above mentioned respectively form the essential or main constituents.

(m) "Month" means calendar month.

2. The Crown Agents for and on behalf of the Government hereby grant and demise to the Lessees All that piece of land situate to the East of Lake Magadi in the Masai Province of the Colony containing by admeasurement 2,209 acres more or less that is to say L.O. No. 2341 of Meridional District South A 37 together with the railway running G & H therethrough and being thereon which said piece of land and railway is delineated on the plan drawn on these presents and more particularly on Land Survey Plan No. 22640 deposited in the Land Surveys Office at Nairobi

Together with full and free right and liberty for the Lessees to construct, maintain, renew, repair and use any telegraph or telephone line or lines for the purposes of the Lessees' own business in connection with the Railway and the working of the Magadi Soda Deposit or either

Demise of Railway -
to Lessees

Liberty as Lessees
to construct
telegraph and
telephone lines

Extract from Clause I of the Magadi Railway Lease dated 20th March 1924

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made between the same parties as are parties hereto and in the same order the Magadi Pier and Depot Works hereinafter defined are intended to be demised to the Lessees from the said 1st day of November 1924 for a term of 99 years subject to payment of the premium and rent thereby reserved and the covenants on the part of the Lessees and conditions therein contained.

And whereas the said Railway hereby demised is now being and is intended to be worked and controlled by the High Commissioner for Transport hereinafter defined as part of the Kenya and Uganda Railway

And whereas the Government have agreed to grant and the Lessees have agreed to take a lease of the said Railway and it has been agreed that the same shall be in the form of these presents and shall contain such covenants and provisions as hereinafter contained

Now this Indenture witnesseth and it is hereby agreed and declared as follows

Interpretation

1. In these presents the following expressions or terms shall have the following meanings respectively

- (A) "The Colony" means the Kenya Colony and Protectorate.
- (B) "The Government" means the Government for the time being of the Colony.
- (C) "The Governor" means the Governor for the time being of the Colony or the person for the time being acting as such.
- (D) "The High Commissioner for Transport" means the High Commissioner for Transport for the Colony and Protectorate of Kenya and the Protectorate of Uganda.
- (E) "The Railway" means the railway hereby demised together with all works apparatus and conveniences to be made or supplied in connection therewith.
- (F) "The Lessees' Manager" means the person appointed by the Lessees to manage their business in the Colony.
- (G) "The General Manager" means the General Manager for the time being of the Kenya and Uganda Railway.
- (H) "The Magadi Lease" means the first before recited Lease of even date herewith.

(I) "The Port Lease" means the second before recited Lease of even date.

(J) "The Magadi Soda Deposit" means the deposits of carbonate of soda and/or carbonate of soda mixed with any other salts included in and demised by the Magadi Lease.

(K) "The Magadi Pier and Depot Works" means the pier, depot, works, conveniences and siding at or near Kilindini included in and intended to be demised by the secondly before recited Lease of even date herewith.

(L) "Soda Goods" means all or any of the following:-

- (i) "Raw Soda" that is to say carbonate of soda and/or carbonate of soda mixed with any other salts as obtained from the Magadi Soda Deposit before calcination.
- (ii) "Soda" that is to say soda ash, carbonate of soda and/or other salts of soda as obtained from raw soda as above mentioned.
- (iii) "Soda products" that is to say soda crystals, caustic soda, bicarbonate of soda and/or any other commodities or preparations which are recognised as soda products in the chemical industry.
- (iv) "Manufactured soda" that is to say manufactured articles or merchandise of which soda or soda products as above mentioned respectively form the essential or main constituents.

(M) "Month" means calendar month.

2. The Crown Agents for and on behalf of the Government hereby grant and demise to the Lessees All that piece of land situate to the East of Lake Magadi in the Masai Province of the Colony containing by admeasurement 2,209 acres more or less that is to say L.O. No. 2341 of Meridional District ^{South A 37} _{G & H} together with the railway running therethrough and being thereon which said piece of land and railway is delineated on the plan drawn on these presents and more particularly on Land Survey Plan No. 22640 deposited in the Land Surveys Office at Nairobi

Together with full and free right and liberty for the Lessees to construct, maintain, renew, repair and use any telegraph or telephone line or lines for the purposes of the Lessees' own business in connection with the Railway and the working of the Magadi Soda Deposit or either

Demise of Railway to Lessees

Liberty to Lessees to construct telegraph and telephone lines

Extract from Clause I of the Magadi Railway Lease. Made 20th March 1928

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To 2/2/28

of them in along or over the demised premises or any part or parts thereof Provided always that the right and liberty aforesaid shall not be exercised so as to interfere with the working of the Railway by the High Commissioner for Transport under the provisions in that behalf hereinafter contained

Exceptions

Excepting nevertheless out of the demise hereby made and reserving unto the Crown Agents for and on behalf of the Government as follows:—

All other minerals
precious stones etc.

- (i) All mines minerals and mineral substances including precious stones and all coins, relics, antiquities and other similar things lying in or on or under the demised premises other than carbonate of soda with full and free right and liberty for the Crown Agents and the Government and their Lessees and persons authorised by them to search for sink to work get raise carry away and dispose of the same and for such purposes to sink drive erect make and use all such pits shafts drifts roads tunnels airways watercourses railways tramways and other roads through across or under the demised premises as shall be necessary or convenient Provided always that the right and liberty aforesaid shall be exercised in such a manner as not to interfere with the working of the Railway or to cause any subsidence of the Railway or of any building or work connected therewith and provided also that the person or persons exercising such right and liberty shall make good or pay reasonable compensation for all damage thereby occasioned to the demised premises.

Liberty to construct
telegraph and
telephone lines

- (ii) Full and free right and liberty for the Government to construct maintain renew repair and use any telegraph or telephone line or lines for the use of the Government in along or over the demised premises or any part or parts thereof and full and free right and liberty for the Government and persons authorised by them to enter upon and occupy so much of the demised premises as may be necessary for the said purposes or any of them without making any compensation therefor but making good all damage done Provided always that the rights and liberties last aforesaid shall be exercised in such a manner as not to interfere with the efficient working of the Railway.

In case of urgency
to take possession

- (iii) Full and free right and liberty for the Government in any case of State urgency (as to the existence of which the Government shall be the sole judge) at any time or times without any consent of or notice to the Lessees to take temporary possession of the

whole or any part of the Railway and the selling stock telegraphs telephones buildings and other things of every description belonging to the Lessees in connection with the Railway and to use the same for its own purposes paying nevertheless therefor reasonable compensation to the Lessees.

- (iv) Full and free right and liberty for the Government at any time or times to have any military marine or police force arms horses guns ammunition baggage or stores mails mail-bags or post office requisites or things conveyed over the Railway or to the Port in priority to any other traffic and in any case of State urgency (as to the existence of which the Government shall be the sole judge) with all the resources of the Railway.

Carriage of
military etc.

To hold unto the Lessees for the term of 99 years from the 1st day of November 1924 if the Magadi Lease shall so long continue to subsist and be effective at the yearly rent of five shillings payable yearly in advance without any deduction on the 1st day of January in every year and so in proportion for any less period than one year the payments for the first two years of the said term having been made on the execution of these presents as the Crown Agents and the Government hereby acknowledge.

Term

3. If the Magadi Lease shall be determined in any manner whatsoever then this Lease shall *ipso facto* determine also but subject to the provisions of Clause 18 of these presents and without prejudice to any right of action or remedy of the Crown Agents or the Government in respect of any antecedent breach by the Lessees of any of the covenants or provisions herein contained.

Lease to
determine if
Magadi Lease
determined

4. The Lessees for themselves their successors and assigns hereby covenant with the Crown Agents and also as a separate covenant with the Government as follows:—

LESSEES'
COVENANTS

- (i) The Lessees will pay the rent hereinbefore reserved at the times and in the manner aforesaid.
- (ii) The sole and exclusive control and management of the Railway shall be vested in the High Commissioner for Transport and the following provisions shall have effect:—

Sole management
of the Railway
to be vested in
the High
Commissioner for
Transport

(A) The High Commissioner for Transport shall work the Railway as a branch of the Kenya and Uganda Railway and as part of the general system of railways operated by the General Manager.

The Railway to be
worked as part of
the Kenya and
Uganda Railway

of them in along or over the demised premises or any part or parts thereof Provided always that the right and liberty aforesaid shall not be exercised so as to interfere with the working of the Railway by the High Commissioner for Transport under the provisions in that behalf hereinafter contained

Exceptions

Excepting nevertheless out of the demise hereby made and reserving unto the Crown Agents for and on behalf of the Government as follows :-

All other minerals precious stones etc.

- (i) All mines minerals and mineral substances including precious stones and all coins treasure relics antiquities and other similar things lying in on or under the demised premises other than carbonate of soda with full and free right and liberty for the Crown Agents and the Government and their Lessees and persons authorised by them to search for sink to work get raise carry away and dispose of the same and for such purposes to sink drive erect make and use all such pits shafts drifts roads tunnels airways watercourses railways tramways and other roads through across or under the demised premises as shall be necessary or convenient Provided always that the right and liberty aforesaid shall be exercised in such a manner as not to interfere with the working of the Railway or to cause any subsidence of the Railway or of any building or work connected therewith and provided also that the person or persons exercising such right and liberty shall make good or pay reasonable compensation for all damage thereby occasioned to the demised premises.

Liberty to construct telegraph and telephone lines

- (ii) Full and free right and liberty for the Government to construct maintain renew repair and use any telegraph or telephone line or lines for the use of the Government in along or over the demised premises or any part or parts thereof and full and free right and liberty for the Government and persons authorised by them to enter upon and occupy so much of the demised premises as may be necessary for the said purposes or any of them without making any compensation therefor but making good all damage done Provided always that the rights and liberties last aforesaid shall be exercised in such a manner as not to interfere with the efficient working of the Railway.

In case of urgency to take possession

- (iii) Full and free right and liberty for the Government in any case of State urgency (as to the existence of which the Government shall be the sole judge) at any time or times without any consent of or notice to the Lessees to take temporary possession of the

whole or any part of the Railway and the rolling stock telegraphs telephones buildings and other things of every description belonging to the Lessees in connection with the Railway and to use the same for its own purposes paying nevertheless therefor reasonable compensation to the Lessees.

- (iv) Full and free right and liberty for the Government at any time or times to have any military marine or police force arms horses guns ammunition baggage or stores mails mail-bags or post office requisites or things conveyed over the Railway or to the Port in priority to any other traffic and in any case of State urgency (as to the existence of which the Government shall be the sole judge) with all the resources of the Railway.

Carriage of military etc.

To hold unto the Lessees for the term of 99 years from the 1st day of November 1924 if the Magadi Lease shall so long continue to subsist and be effective at the yearly rent of five shillings payable yearly in advance without any deduction on the 1st day of January in every year and so in proportion for any less period than one year the payments for the first two years of the said term having been made on the execution of these presents as the Crown Agents and the Government hereby acknowledge.

Term

3. If the Magadi Lease shall be determined in any manner whatsoever then this Lease shall ipso facto determine also but subject to the provisions of Clause 18 of these presents and without prejudice to any right of action or remedy of the Crown Agents or the Government in respect of any antecedent breach by the Lessees of any of the covenants or provisions herein contained.

Lease to determine if Magadi Lease determined

4. The Lessees for themselves their successors and assigns hereby covenant with the Crown Agents and also as a separate covenant with the Government as follows :-

LESSEES' COVENANTS

- (i) The Lessees will pay the rent hereinbefore reserved at the times and in the manner aforesaid.
- (ii) The sole and exclusive control and management of the Railway shall be vested in the High Commissioner for Transport and the following provisions shall have effect:-
 - (A) The High Commissioner for Transport shall work the Railway as a branch of the Kenya and Uganda Railway and as part of the general system of railways operated by the General Manager.

To pay rent

Sole management of the Railway to be vested in the High Commissioner for Transport

The Railway to be worked as part of the Kenya and Uganda Railway

No preference to be given to Lessees

The High Commissioner for Transport may make alterations and additions to the Railway

The High Commissioner for Transport to allow motor or push trolleys to be run for Managers Staff and workmen

Lessees shall pay freight and observe the provisions hereinafter contained

Yearly minimum consignments by rail

(b) The Lessees shall not claim or be entitled to receive from the High Commissioner for Transport any preference or priority whatsoever as to transport or the supply of locomotives or rolling stock or the maintenance or equipment of the Railway or otherwise howsoever.

(c) The High Commissioner for Transport may at his own expense at any time or times make any alteration or addition to the Railway for the purpose of accommodating traffic other than traffic of the Lessees.

(d) The High Commissioner for Transport will allow the Lessees to run motor or push trolley over the Railway for the use of their Managers Staff and workmen on occasions when there is no convenient train available or on other occasions of emergency and provided such running does not interfere with the normal working of the Railway.

(iii) The Lessees shall pay the charges for freight hereinafter specified at the times and in manner hereinafter provided and shall at all times duly pay all such other charges and all such moneys and do and perform all such acts and things as under the provisions hereinafter in this Lease contained are by them to be paid done or performed

(iv) (A) The Lessees will in each of the years ending on the 31st day of October 1927, 1928, 1929, 1930 and 1931 despatch by railway not less than 50,000 tons of Soda Goods and in the year ending on the 31st day of October 1932 and every subsequent year ending on the 31st day of October during the term hereby granted the Lessees will despatch by railway not less than 100,000 tons of Soda Goods

Provided that subject to Clause 29 hereof whether the minimum weights set out above are despatched by the Lessees or not the Lessees shall be liable for and shall pay to the High Commissioner for Transport the amount of freight appropriate to and due in respect thereof.

(B) If and whenever the Lessees shall in any year have made default to an extent not exceeding 10 per cent. of the tonnage stipulated to be despatched by railway for that year then the Lessees may in the first three months of the next succeeding year make good such deficiency but the amount making good such deficiency shall not be taken as part of the tonnage stipulated for the latter year. No excess of tonnage in any preceding

year shall be allowed towards making good a deficiency in any subsequent year.

(c) Provided always and it is hereby agreed that any breach of the covenant contained in sub-clause (A) above not due to force majeure as hereinafter defined shall be waived if the Lessees shall on or before the 1st day of April next following the date on which such breach shall have occurred pay the amount which would have been payable for freight for the period in respect of which such breach shall have occurred if the Lessees had duly performed the covenant contained in sub-clause (A) above

Provided further and it is hereby agreed that nothing in this Lease contained except the provisions of Clause 29 hereof shall prevent the High Commissioner for Transport at his option from electing to sue the Lessees for any unpaid freight and to obtain satisfaction of any judgment by attachment of any of the Lessees' property.

(v) The Lessees will at the expiration or (subject to the provisions of Clause 18 of these presents) the sooner determination of the term hereby granted deliver up to the Government the demised premises with all buildings and fixtures thereon except such fixtures and things as the Lessees are by law entitled to remove in such state and condition in all respects as shall be consistent with the due performance and observance of the provisions herein contained and in proper order for the future working of the Railway.

(vi) (A) The Lessees shall not assign underlet or part with the possession of the demised premises or any part thereof (except to the High Commissioner for Transport in accordance with the provisions hereof) or suffer any corporation (other than the Lessees) or any person to occupy the demised premises or any part thereof as a licensee without the previous consent in writing of the Crown Agents but such consent shall not be unreasonably withheld.

(B) Provided always that the Crown Agents may withhold such consent if the proposed transaction does not form part of a larger transaction which includes as well the premises demised by the Magadi Lease or unless the Lessees shall before the assignment or underlet or any agreement for the same shall be executed deliver to the Crown Agents an indenture to be prepared by the solicitors for the time being of the Crown Agents at the cost of the Lessees containing a covenant by the intended

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Supplies to be
at the Lessees

The High
Commissioner for
Transport
may make altera-
tions and additions
to the Railway

The High
Commissioner for
Transport to allow
motor or push-
trailer to be run for
Managers Staff and
workmen

Lessees to pay
freight and observe
the provisions
hereinafter contained

Yearly minimum
tonnage to be sent

(b) The Lessees shall not claim or be entitled to receive from the High Commissioner for Transport any preference or priority whatsoever as to transport or the supply of locomotives or rolling stock or the maintenance or equipment of the Railway or otherwise howsoever.

(c) The High Commissioner for Transport may at his own expense at any time or times make any alteration or addition to the Railway for the purpose of accommodating traffic other than traffic of the Lessees.

(d) The High Commissioner for Transport will allow the Lessees to run a motor or push-trailer over the Railway for the use of their Managers Staff and workmen on occasions when there is no convenient train available or on other occasions of emergency and provided such running does not interfere with the normal working of the Railway.

(iii) The Lessees shall pay the charges for freight hereinafter specified at the times and in manner hereinafter provided and shall at all times duly pay all such other charges and all such moneys and do and perform all such acts and things as under the provisions hereinafter in this Lease contained are by them to be paid done or performed.

(iv) (A) The Lessees will in each of the years ending on the 31st day of October 1927, 1928, 1929, 1930 and 1931 despatch by railway not less than 50,000 tons of Soda Goods and in the year ending on the 31st day of October 1932 and every subsequent year ending on the 31st day of October during the term hereby granted the Lessees will despatch by railway not less than 100,000 tons of Soda Goods.

Provided that subject to Clause 29 hereof whether the minimum weights set out above are despatched by the Lessees or not the Lessees shall be liable for and shall pay to the High Commissioner for Transport the amount of freight appropriate to and due in respect thereof.

(B) If and whenever the Lessees shall in any year have made default to an extent not exceeding 10 per cent. of the tonnage stipulated to be despatched by railway for that year then the Lessees may in the first three months of the next succeeding year make good such deficiency but the amount making good such deficiency shall not be taken as part of the tonnage stipulated for the latter year. No excess of tonnage in any preceding

year shall be allowed towards making good a deficiency in any subsequent year.

(c) Provided always and it is hereby agreed that any breach of the covenant contained in sub-clause (A) above not due to force majeure as hereinafter defined, shall be waived if the Lessees shall on or before the 1st day of April next following the date on which such breach shall have occurred pay the amount which would have been payable for freight for the period in respect of which such breach shall have occurred if the Lessees had duly performed the covenant contained in sub-clause (A) above

Provided further and it is hereby agreed that nothing in this Lease contained except the provisions of Clause 29 hereof shall prevent the High Commissioner for Transport at his option from electing to sue the Lessees for any unpaid freight and to obtain satisfaction of any judgment by attachment of any of the Lessees' property.

(v) The Lessees will at the expiration or (subject to the provisions of Clause 18 of these presents) the sooner determination of the term hereby granted deliver up to the Government the demised premises with all buildings and fixtures thereon except such fixtures and things as the Lessees are by law entitled to remove in such state and condition in all respects as shall be consistent with the due performance and observance of the provisions herein contained and in proper order for the future working of the Railway.

(vi) (A) The Lessees shall not assign underlet or part with the possession of the demised premises or any part thereof (except to the High Commissioner for Transport in accordance with the provisions hereof) or suffer any corporation (other than the Lessees) or any person to occupy the demised premises or any part thereof as a licensee without the previous consent in writing of the Crown Agents but such consent shall not be unreasonably withheld.

(B) Provided always that the Crown Agents may withhold such consent if the proposed transaction does not form part of a larger transaction which includes as well the premises demised by the Magadi Lease or unless the Lessees shall before the assignment or underlet or any agreement for the same shall be executed deliver to the Crown Agents an indenture to be prepared by the solicitors for the time being of the Crown Agents at the cost of the Lessees containing a covenant by the intended

assignee or underlessee with the Crown Agents and also separately with the Government to perform and observe during the term assigned or granted to him the covenants by the Lessees and conditions in these presents contained in the same manner as if such covenants and conditions were therein repeated with the substitution of the name of the intended assignee or underlessee for the name of the Lessees and with such other alterations as the circumstances shall render necessary and also containing a provision determining the term thereby assigned or granted on breach of any of the said covenants by the intended assignee or underlessee.

(c) Provided also that upon any assignment of the demised premises or any part thereof being made in accordance with these presents if each indenture as hereinbefore in this clause mentioned shall have been duly executed by the assignee and delivered to the Crown Agents then the Lessees making the assignment shall thereupon cease to be personally liable under any of the covenants or obligations of these presents so far as the same relate to the premises comprised in such assignment but without prejudice to any right of action or remedy of the Crown Agents or the Government in respect of any antecedent breach by the Lessees of any of such covenants or obligations.

(vi) It and whenever any excepted mineral (that is to say any mineral or mineral substance precious stone coin treasure relic antiquity or other similar thing excepted out of the demised hereby made) shall be found in or upon the demised premises the Lessees shall forthwith give notice thereof to the Government and take all reasonable steps for the safe preservation thereof.

(vii) (A) If and whenever any of the demised lands shall in the opinion of the General Manager be or become unnecessary for the purposes of the Railway whether immediate or prospective purposes the Lessees shall at any time thereafter upon the request in writing of the Government forthwith surrender the same to the Government.

(B) If any difference shall arise as to whether any land is or is not unnecessary for the immediate or prospective purposes of the Railway such difference shall be referred to arbitration under the provisions in that behalf hereinafter contained.

(ix) The Lessees shall comply with all obligations which may be imposed on them by any General Ordinance for the time being in force in the Colony.

To give notice of finding any excepted minerals

Superfluous lands

To comply with Ordinances

(x) In everything done hereunder the Lessees shall interfere with public and private conveniences and rights as far as possible and shall take all such precautions and provide and maintain all such temporary and permanent accommodation works as shall be reasonably required for the prevention of damage or injury to any property or person or for the due preservation or maintenance of any public right or property.

(xi) The Lessees shall be solely responsible for and shall indemnify and keep indemnified the Government against all accidents damages claims and losses which may occur or be incurred or claimed in or by reason of anything done upon the demised premises or any part thereof and if the Government shall by reason of the default of the Lessees make any payment in respect of such damages claims or losses then and in every such case the Lessees shall repay to the Government on demand the amount of the money so paid and of the costs incurred therein by the Government but this clause shall not extend to any accident damage claim or loss which may occur or be incurred or claimed in or by reason of the working of the Railway by the High Commissioner for Transport unless the same shall have arisen from some neglect or default of the Lessees.

(xii) The Lessees shall at all times provide a suitable office on the site of the Railway or the Kenya and Uganda Railway where notices may be left for or addressed to the Lessees.

(xiii) The Lessees shall not at any time during the term hereby granted sell give barter or otherwise dispose of any arms or ammunition of any description to any native or permit or suffer any such sale gift barter or other disposition to be made by any employee or agent of the Lessees.

(xiv) The Lessees shall not at any time during the term hereby granted sell give barter or otherwise dispose of any spirituous liquor to any native or permit or suffer any such sale gift barter or other disposition to be made by any employee or agent of the Lessees or import or authorise the importation of any spirituous liquor into the Colony except for the use of the European agents or employees of the Lessees and in accordance with and subject to such rules as may from time to time be made by the Governor in that behalf.

(xv) If the Government shall at any time during the term hereby granted incur any expenditure in erecting or maintaining any sanitary works or regulations upon or in the neighbourhood of the Railway the Lessees shall so far as such expenditure is rendered necessary or increased by the operations of the Lessees or by the presence of the agents or workmen of the Lessees

Not to interfere with public or private rights

To indemnify Government against claims

Contractors to provide office

No arms or ammunition to be sold to natives

No spirituous liquor to be sold to natives or imported except for Europeans

As to liability of Lessees to special sanitary measures

Provided that whenever in any year the total weight of soda goods carried shall be greater than 50,000 tons or greater than 150,000 tons respectively the amount payable in respect of freight shall not be less than the amount which would be payable on 50,000 tons or 150,000 tons as the case may be.

And provided further that in any year until the total weights of 50,000 tons and 150,000 tons have been exceeded the amount charged and payable in respect of freight shall be at the rate of Shs. 18/- per ton or Shs. 17/- per ton respectively and if and when these total weights are exceeded the High Commissioner for Transport shall credit the Lessees with the difference between the higher and lower rate or rates then appropriated.

- (c) (i) At the expiration of the first and every subsequent period of five years, the General Manager may increase the rate for the time being payable but so that the rate in force in each year during the second or third period of five years shall not exceed the following:-

TOTAL WEIGHT CARRIED	Rate per ton for each ton carried in lots of not less than 10 tons (it being agreed that where lots of less than ten tons are carried the rate shall be the ordinary rate in force for the time being on the Kenya and Uganda Railway).
Not exceeding 150,000 tons	Sh. 20.00
Exceeding 150,000 tons	18.00

Provided that whenever in any year the total weight of soda goods carried shall be greater than 150,000 tons the amount payable in respect of freight shall not be less than the amount which would be payable on 150,000 tons.

And provided further that in any year until the total weight of 150,000 tons has been exceeded the amount charged and payable in respect of freight shall be at the rate of Shs. 20/- per ton and if and when this weight is exceeded the High Commissioner for Transport shall credit the Lessees with the difference between Shs. 20/- and Shs. 18/-.

- (ii) Every increase of rate as aforesaid shall be made by the General Manager who shall give to the Lessees not less than six months' notice in writing in that behalf to expire at the end of the then current period of five years.
- (iii) The General Manager shall not give notice of any such increase unless he shall consider the same reasonable having regard to

the prevailing and probable cost of working the traffic and the selling price of the soda goods or any of them.

- (iv) The General Manager shall so soon as conveniently may be after service of any such notice deliver to the Lessees a statement of the cost of working the traffic of the soda goods during the period of the first six months of the last year of the then current period of five years.
- (v) The Lessees may within one month after receipt of any such statement of cost serve upon the General Manager notice referring the increase to arbitration in accordance with the provisions in that behalf hereinafter contained and in such case the validity of such increase shall be determined accordingly.
- (vi) In such arbitration regard shall be had to the prevailing and probable cost of working of the traffic and to whether the prevailing and probable selling price of the soda goods permits an increase in the rate of freight and to all other considerations which the arbitrators or their umpire may consider material.
- (vii) The award may allow the increase or any part thereof or may disallow the same and shall be confined and restricted within these limits accordingly.
- (viii) If the award shall not be made before the commencement of the period of five years to which the notice of increase relates the Lessees shall pay the increased rates specified in the notice as from the commencement of the said period and all proper adjustments and allowances consequential upon the award shall be made after award made.
- (ix) An increased rate shall continue in force for the period of five years to which it relates and thereafter until again increased as hereinbefore provided or decreased as hereinafter provided.
- (x) The General Manager may at any time by notice to the Lessees decrease the rate for the time being in force and such decrease shall take effect from the time mentioned in the notice but any such decrease may be revoked at any time by the General Manager by a further notice in that behalf given to the Lessees.
11. Except as hereinbefore provided the rates for goods and the fares for passengers carried over the Railway shall be fixed from time to time by the General Manager according to the scale for the time being and from time to time in force on the Kenya and Uganda Railway.
12. (i) All freight charges shall be payable to the High Commissioner for Transport in advance, or if the Lessees desire it the same shall be

Rates for other goods and fares for passengers

Freight to be payable in advance

carried to a Ledger Account which shall be secured by guarantees to the satisfaction of the Crown Agents.

(ii) Any freight charge not paid in advance shall carry interest from and after the day on which the same should have been so paid in advance or in the event of the Lessees having desired the freight charges to be carried to a Ledger Account and having secured the same as aforesaid from and after the customary date for payment of Ledger Accounts until actual payment thereof at the following rates that is to say during the first six months at the rate of £4 per cent. per annum and thereafter at the rate of £6 per cent. per annum.

Demurrage

13. The Lessees shall pay demurrage on trucks belonging to the High Commissioner for Transport according to the rates of the High Commissioner for Transport for the time being in force.

14. Provided always and these presents are upon the express conditions following:

Lessees to be and remain British

- (i) The Lessees and any company or corporation becoming by assignment or otherwise entitled to the term hereby granted or any part thereof or to possession of the demised premises or any part thereof shall be and remain British in constitution and character registered in Great Britain or in a British Colony and their principal place of business within His Majesty's dominions and the Chairman and at least four-fifths in number of the Directors of the Lessees or any such company or corporation as aforesaid shall at all times be and remain British subjects.
- (ii) In the event of any alteration being proposed in the Memorandum or Articles of Association or constitution of the Lessees or any such company or corporation as aforesaid notice thereof shall be given in writing to the Crown Agents who if in their opinion the said alteration shall be contrary to the cardinal principle that the Lessees and any such company or corporation as aforesaid shall be and remain a British Company under British control may refuse their consent to such alteration.
- (iii) If and whenever any such alteration shall be made without the written consent of the Crown Agents or if the Chairman and at least four-fifths in number of the Directors thereof shall not be British subjects the Crown Agents may thereupon forthwith by notice served on the Lessees or such company or corporation as aforesaid as the case may be determine the demise hereby made without making any compensation but subject to the provisions of Clause 18 of these presents and without prejudice

to any right of action or remedy of the Crown Agents or the Government in respect of any antecedent breach of any of the covenants by the Lessees or conditions herein contained.

15. The Crown Agents hereby covenant with the Lessees as follows:—

(i) The Lessees paying the rent hereby reserved and observing and performing the covenants and conditions herein contained and on the Lessees' part to be observed and performed shall and may peaceably and quietly possess and enjoy the demised premises during the said term without any lawful interruption from or by the Crown Agents or the Government or any persons rightfully claiming from or under them.

For quiet enjoyment

(ii) That the High Commissioner for Transport and the General Manager will at all times observe the provisions of this Lease so far as the same relate to acts and things to be performed or done by the High Commissioner for Transport or the General Manager.

For acts to be done by the High Commissioner for Transport

(iii) No land within a quarter of a mile on either side of the railway from Magadi Junction to Lake Magadi shall be sold leased or otherwise disposed of by the Government to any person persons or corporation other than the Lessees without first giving to the Lessees the option of acquiring from the Government the whole of the land so proposed to be sold leased or otherwise disposed of on the same or similar terms and conditions as those on which the Government may be willing to sell lease or otherwise dispose of the same to any other person persons or corporation and such option shall be exercisable by the Lessees within two months from and after service upon the Lessees of notice in that behalf.

Lessees to have first refusal of all land near railway

16. Provided always that if and whenever the said rent hereby reserved or any freight charges hereby covenanted to be paid or any part thereof respectively shall be in arrear for the space of sixty days next after any of the days whereon the same ought to be paid as aforesaid (whether the same shall or shall not have been legally demanded) or if there shall be any breach or non-observance of any of the covenants on the part of the Lessees (whether negative or affirmative) herein contained or if the Lessees while the demised premises or any part thereof remain vested in them shall go into liquidation whether voluntary or compulsory (except with the consent in writing of the Government a voluntary liquidation for the purpose of reconstruction only) or suffer a receiver of their undertaking or any part thereof to be appointed by any Court of competent jurisdiction or commit any act which would render the Lessees liable to be wound up on petition or in the case of assigns

Proviso for re-entry

carried to a Ledger Account which shall be secured by guarantees to the satisfaction of the Crown Agents.

(ii) Any freight charge not paid in advance shall carry interest from and after the day on which the same should have been so paid in advance or in the event of the Lessees having desired the freight charges to be carried to a Ledger Account and having secured the same as aforesaid from and after the customary date for payment of Ledger Accounts until actual payment thereof at the following rates that is to say during the first six months at the rate of £4 per cent. per annum and thereafter at the rate of £6 per cent. per annum.

13. The Lessees shall pay demurrage on trucks belonging to the High Commissioner for Transport according to the rates of the High Commissioner for Transport for the time being in force.

14. Provided always and these presents are upon the express conditions following:

- (i) The Lessees and any company or corporation becoming by assignment or otherwise entitled to the term hereby granted or any part thereof or to possession of the demised premises or any part thereof shall be and remain British in constitution and character registered in Great Britain or in a British Colony and having their principal place of business within His Majesty's dominions and the Chairman and at least four-fifths in number of the Directors of the Lessees or any such company or corporation as aforesaid shall at all times be and remain British subjects.
- (ii) In the event of any alteration being proposed in the Memorandum or Articles of Association or constitution of the Lessees or any such company or corporation as aforesaid notice thereof shall be given in writing to the Crown Agents who if in their opinion the said alteration shall be contrary to the cardinal principle that the Lessees and any such company or corporation as aforesaid shall be and remain a British Company under British control may refuse their consent to such alteration.
- (iii) If and whenever any such alteration shall be made without the written consent of the Crown Agents or if the Chairman and at least four-fifths in number of the Directors thereof shall not be British subjects the Crown Agents may thereupon forthwith by notice served on the Lessees or such company or corporation as aforesaid as the case may be determine the demise hereby made without making any compensation but subject to the provisions of Clause 18 of these presents and without prejudice

Demurrage

Lessees to be and remain British

to any right of action or remedy of the Crown Agents or the Government in respect of any antecedent breach of any of the covenants by the Lessees or conditions herein contained.

15. The Crown Agents hereby covenant with the Lessees as follows: Lessees' COVENANTS

(i) The Lessees paying the rent hereby reserved and observing and performing the covenants and conditions herein contained and on the Lessees' part to be observed and performed shall and may peaceably and quietly possess and enjoy the demised premises during the said term without any lawful interruption from or by the Crown Agents or the Government or any persons rightfully claiming from or under them. For quiet enjoyment

(ii) That the High Commissioner for Transport and the General Manager will at all times observe the provisions of this Lease so far as the same relate to acts and things to be performed or done by the High Commissioner for Transport or the General Manager. For acts to be done by the High Commissioner for Transport

(iii) No land within a quarter of a mile on either side of the railway from Magadi Junction to Lake Magadi shall be sold leased or otherwise disposed of by the Government to any person persons or corporation other than the Lessees without first giving to the Lessees the option of acquiring from the Government the whole of the land so proposed to be sold leased or otherwise disposed of on the same or similar terms and conditions as those on which the Government may be willing to sell lease or otherwise dispose of the same to any other person persons or corporation and such option shall be exercisable by the Lessees within two months from and after service upon the Lessees of notice in that behalf. Lessees to have first refusal of all land near railway

16. Provided always that if and whenever the said rent hereby reserved or any freight charges hereby covenanted to be paid or any part thereof respectively shall be in arrear for the space of sixty days next after any of the days whereon the same ought to be paid as aforesaid (whether the same shall or shall not have been legally demanded) or if there shall be any breach or non-observance of any of the covenants on the part of the Lessees (whether negative or affirmative) herein contained or if the Lessees while the demised premises or any part thereof remain vested in them shall go into liquidation whether voluntary or compulsory (except with the consent in writing of the Government a voluntary liquidation for the purpose of reconstruction only) or suffer a receiver of their undertaking or any part thereof to be appointed by any Court of competent jurisdiction or commit any act which would render the Lessees liable to be wound up on petition or in the case of assigns Proviso for re-entry

of the Lessees not being a corporation shall or any of them shall become bankrupt or make any assignment for the benefit of or enter into any arrangement for composition with their or his creditors then and in any of the said cases it shall be lawful for the Crown Agents or the Government although they may not have taken advantage of some previous default of the like nature at any time thereafter into and upon the demised premises or any part thereof in the name of the whole to re-enter and the same to have again repossess and enjoy as in their former estate but subject to the provisions of Clause 18 of these presents And thereupon this Lease shall cease and determine but without prejudice to any right of action or remedy which may have accrued to the Crown Agents or the Government in respect of any antecedent breach by the Lessees of any of the covenants or provisions herein contained provided that this proviso for re-entry shall be subject to all such restrictions and conditions and such relief against forfeiture as shall for the time being be applicable under the laws of England to provisos for re-entry contained in leases of similar property in England.

17. At the expiration of the term of 99 years hereby granted (but not on the sooner determination of the said term) the Railway and all the assets and property whatsoever of the Lessees used for the purposes of or in connection with the Railway shall immediately on the expiration of the said term and free from all payment be and become the property of the Government.

18. If this Lease shall be determined otherwise than by effluxion of the said term of 99 years the Government shall have the right to purchase the Railway and all the assets and property whatsoever of the Lessees used for the purposes of or in connection with the Railway at the price hereinafter mentioned upon giving to the Lessees one month's notice in writing in that behalf such notice to be given within one month next after the determination of the Lease. If such notice be not given the Lessees shall be entitled within 12 months from the determination of the Lease to remove the Railway material and the assets and property of the Lessees used for the purposes of or in connection with the Railway.

19. (a) The Government shall have the right at any time during the continuance of the term hereby granted to purchase the Railway and all the assets and property whatsoever of the Lessees used for the purposes of or in connection with the Railway and all the interest of the Lessees under these presents at the price hereinafter mentioned upon giving to the Lessees one year's notice in writing in that behalf.

(ii) If the Government shall exercise this present right then from and after the completion of the purchase until the expiration or sooner

determination of the Magadi Lease the Lessees shall be entitled to the following rights and privileges:—

- (A) The right without payment to use and work for the purpose of the Lessees' own business in connection with the working of the Magadi Soda Deposit such telegraph and telephone lines as the Lessees or the Company whose assets they have acquired before the date of the notice exercising the said option may have constructed under the liberty in that behalf hereinbefore granted. Telegraph and telephone lines
- (B) The right to have their goods conveyed in the manner and at the rates hereinbefore prescribed. Carriage of goods
- (C) The right to have the Railway with all necessary rolling stock and other equipment and the traffic thereon maintained worked and managed in accordance with the provisions of Clauses 4 (ii) 5 and 7 of these presents.

20. The price payable by the Government upon a purchase under the exercise of either of the aforesaid rights shall be ascertained by deducting the sums hereinafter mentioned from the aggregate of the two following sums namely:—

- (A) The sum of £569,582 being the agreed amount of the capital outlay made by the Lessees or the Company whose assets they have acquired in the construction of the Railway prior to the date hereof.
- (B) All sums expended by the Lessees after the date hereof and prior to the date of the notice exercising the option upon additions or betterments.

The sums (if any) to be deducted from the aggregate of the two above-mentioned sums shall be ascertained as follows: If and whenever after the 31st day of October 1926 in any year ending on the 31st day of October during the continuance of the term hereby granted the aggregate amount payable by the Lessees by way of freight charges hereunder and by way of royalties under the Magadi Lease shall fall short of a sum equal to the aggregate amount of a Railway rate of seventeen shillings and seventy-two cents of a shilling per ton on the freight despatched by Railway or agreed to be despatched by Railway during that year and the amount payable by way of royalties under the Magadi Lease (provided that for the purpose of this clause such royalties shall be deemed to be payable from the date of these presents) then and in any such case the amount of the deficiency together with compound interest thereon at the rate of 4 per cent. per annum calculated with yearly rests from the expiration of the

At end of the 99 years term the Railway and all the assets and property whatsoever of the Lessees shall be and become the property of the Government.

Option to the Government to purchase at any time

Option exercised by the Lessees to buy certain rights

of the Lessees not being a corporation shall or any of them shall become bankrupt or make any assignment for the benefit of or enter into any arrangement for composition with their or his creditors then and in any of the said cases it shall be lawful for the Crown Agents or the Government although they may not have taken advantage of some previous default of the like nature at any time thereafter into and upon the demised premises or any part thereof in the name of the whole to re-enter and the same to have again repossess and enjoy as in their former estate but subject to the provisions of Clause 18 of these presents And thereupon this Lease shall cease and determine but without prejudice to any right of action or remedy which may have accrued to the Crown Agents or the Government in respect of any antecedent breach by the Lessees of any of the covenants or provisions herein contained provided that this proviso for re-entry shall be subject to all such restrictions and conditions and such relief against forfeiture as shall for the time being be applicable under the laws of England to provisos for re-entry contained in leases of similar property in England.

17. At the expiration of the term of 99 years hereby granted but not on the sooner determination of the said term) the Railway and all the assets and property whatsoever of the Lessees used for the purposes of or in connection with the Railway shall immediately on the expiration of the said term and free from all payment be and become the property of the Government.

18. If this Lease shall be determined otherwise than by effluxion of the said term of 99 years the Government shall have the right to purchase the Railway and all the assets and property whatsoever of the Lessees used for the purposes of or in connection with the Railway at the price hereinafter mentioned upon giving to the Lessees one month's notice in writing in that behalf such notice to be given within one month next after the determination of the Lease. If such notice be not given the Lessees shall be entitled within 12 months from the determination of the Lease to remove the Railway material and the assets and property of the Lessees used for the purposes of or in connection with the Railway.

19. (a) The Government shall have the right at any time during the continuance of the term hereby granted to purchase the Railway and all the assets and property whatsoever of the Lessees used for the purposes of or in connection with the Railway and all the interest of the Lessees under these presents at the price hereinafter mentioned upon giving to the Lessees one year's notice in writing in that behalf.

(ii) If the Government shall exercise this present right then from and after the completion of the purchase until the expiration or sooner

determination of the Magadi Lease the Lessees shall be entitled to the following rights and privileges:—

- (A) The right without payment to use and work for the purpose of the Lessees' own business in connection with the working of the Magadi Soda Deposit such telegraph and telephone lines as the Lessees or the Company whose assets they have acquired before the date of the notice exercising the said option may have constructed under the liberty in that behalf hereinbefore granted. Telegraph and telephone lines
- (B) The right to have their goods conveyed in the manner and at the rates hereinbefore prescribed. Carriage of goods
- (C) The right to have the Railway with all necessary rolling stock and other equipment and the traffic thereon maintained worked and managed in accordance with the provisions of Clauses 4 (ii) 5 and 7 of these presents.

20. The price payable by the Government upon a purchase under the exercise of either of the aforesaid rights shall be ascertained by deducting the sums hereinafter mentioned from the aggregate of the two following sums namely:—

- (A) The sum of £569,582 being the agreed amount of the capital outlay made by the Lessees or the Company whose assets they have acquired in the construction of the Railway prior to the date hereof.
- (B) All sums expended by the Lessees after the date hereof and prior to the date of the notice exercising the option upon additions or betterments.

The sums (if any) to be deducted from the aggregate of the two above-mentioned sums shall be ascertained as follows: If and whenever after the 31st day of October 1926 in any year ending on the 31st day of October during the continuance of the term hereby granted the aggregate amount payable by the Lessees by way of freight charges hereunder and by way of royalties under the Magadi Lease shall fall short of a sum equal to the aggregate amount of a Railway rate of seventeen shillings and seventy-two cents of a shilling per ton on the freight despatched by Railway or agreed to be despatched by Railway during that year and the amount payable by way of royalties under the Magadi Lease (provided that for the purpose of this clause such royalties shall be deemed to be payable from the date of these presents) then and in any such case the amount of the deficiency together with compound interest thereon at the rate of 4 per cent. per annum calculated with yearly rests from the expiration of the

At end of the 99 years term the Railway and all assets belonging to the Lessees

Option to the Government to purchase at any time

Option to the Government to purchase at any time

If option exercised the Lessees to have certain rights

year in which such deficiency occurs down to the date of completion of the purchase shall be deducted in ascertaining the price to be paid by the Government as aforesaid.

Limitation of extent of option

21. The options of purchase conferred by Clauses 18 and 19 (i) of these presents shall not extend to any land which may have been acquired by the Lessees under Clause 15 (iii) of these presents.

Rights of purchase not to prejudice other rights

22. The rights of purchase hereinbefore conferred on the Government are without prejudice to all of any other rights of the Crown Agents or the Government or by virtue of these presents.

Notice of these provisions to be endorsed on debentures

23. Every debenture or other instrument creating or purporting to create any charge upon the Railway or any other asset or property of the Lessees subject to the rights of purchase aforesaid shall contain or have endorsed thereon notice of the said rights of purchase.

Property to be conveyed free from incumbrances

24. All and every the assets and property purchased by the Government as aforesaid shall be conveyed or delivered to the Government on completion of the purchase free from incumbrances.

General Manager may delegate

25. The General Manager may from time to time and at any time delegate to assistants all or any of his powers rights authorities or discretions whether vested in him hereunder or otherwise as he may think fit and the Lessees shall on written notice of such delegation recognise such assistants as lawfully exercising the powers rights authorities or discretions so delegated to them.

Members or officers of Government not to be personally liable

26. No member or officer of the Government or the Crown Agents shall be in anywise bound personally for the acts and obligations of the Government under these presents or answerable for any default or omission in the observance or performance of any of the acts matters or things which are hereby made obligatory on the Government or the Crown Agents.

Certificate of the Government

27. A certificate signed by the Governor shall be conclusive evidence of any order requirement determination or appointment of the Government mentioned in such certificate.

Notice to be given or served by or on behalf of the Government or the Crown Agents for the purposes of these presents shall be in writing under the hand of the Governor or of the Crown Agents or one of them or any person authorised on their behalf or of the General Manager and shall either be delivered to or left for the Lessees at the office hereinbefore covenanted to be provided and maintained by them or at their registered office for the time being in England or at their principal or last known place of business in the Colony.

28. Every approval consent or notice to be given or served by or on behalf of the Government or the Crown Agents for the purposes of these presents shall be in writing under the hand of the Governor or of the Crown Agents or one of them or any person authorised on their behalf or of the General Manager and shall either be delivered to or left for the Lessees at the office hereinbefore covenanted to be provided and maintained by them or at their registered office for the time being in England or at their principal or last known place of business in the Colony.

29. Except in cases (if any) in which these presents expressly provide to the contrary no failure or omission by the Lessees in the observance or performance of any of the stipulations agreements or conditions herein contained and on the part of the Lessees to be observed or performed shall give rise to any claim or demand against the Lessees or in any manner operate to the prejudice of the Lessees or be deemed a breach of any covenant or obligation on the part of the Lessees hereunder whether express or implied if it be shown to the reasonable satisfaction of the Governor that the default has arisen from *force majeure* that is to say any of the following causes namely: the act of God insurrection riots war strikes or combinations or lockouts of workmen not properly attributable to the improper acts or defaults of the Lessees or any other circumstances whether *ejusdem generis* with the foregoing circumstances or not which in the opinion of the Governor may be beyond the reasonable control of the Lessees. And if and so often as anything which the Lessees hereby agree to do within any specified time shall be delayed by any such cause such specified time shall be proportionately extended.

Provision for arbitration

30. (i) In case and so often as any dispute difference or question shall arise between the parties hereto or any Government Corporation Company or person claiming through or under them respectively or between any of such parties Governments Corporations Companies or persons concerning or relating to the subject matter of these presents or any part thereof or the construction meaning or effect of these presents or of any award made in pursuance hereof or any clause or thing contained herein or in any such award as aforesaid or the rights or liabilities of any party hereto or of any such Government Corporation Company or person as aforesaid hereunder or under any such award as aforesaid then (except in any case and as to any matter for which other provision is herein made) the subject of every such dispute difference or question shall in every case on the demand in writing of either party be referred to the arbitration and award of an umpire if the parties can agree to an umpire and in case they cannot so agree then of two arbitrators one to be appointed by each party to the reference, and an umpire to be appointed by the two arbitrators or if such two arbitrators fail for one month after their appointment to appoint an umpire by His Majesty's Secretary of State for the Colonies for the time being. The decision of such umpire or arbitrators as the case may be shall be final and without appeal and binding upon all parties. If either party to any dispute difference or question make default in appointing an arbitrator within three months after the other party has given him or them notice to appoint the same the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the

year in which such deficiency occurs down to the date of completion of the purchase shall be deducted in ascertaining the price to be paid by the Government as aforesaid.

21. The options of purchase conferred by Clauses 18 and 19 (i) of these presents shall not extend to any land which may have been acquired by the Lessees under Clause 15 (iii) of these presents.

22. The rights of purchase hereinbefore conferred upon the Government are without prejudice to all or any other the rights of the Crown Agents or the Government under or by virtue of these presents.

23. Every debenture or other instrument creating or purporting to create any charge upon the Railway or any other asset or property of the Lessees subject to the rights of purchase aforesaid shall contain or have endorsed thereon notice of the said rights of purchase.

24. All and every the assets and property purchased by the Government as aforesaid shall be conveyed or delivered to the Government on completion of the purchase free from incumbrances.

25. The General Manager may from time to time and at any time delegate to assistants all or any of his powers rights authorities or discretions whether vested in him hereunder or otherwise as he may think fit and the Lessees shall on written notice of such delegation recognise such assistants as lawfully exercising the powers rights authorities or discretions so delegated to them.

26. No member or officer of the Government or the Crown Agents shall be in anywise bound personally for the acts and obligations of the Government under these presents or answerable for any default or omission in the observance or performance of any of the acts matters or things which are hereby made obligatory on the Government or the Crown Agents.

27. A certificate signed by the Governor shall be conclusive evidence of any order requirement determination or appointment of the Government mentioned in such certificate.

28. Every approval consent or notice to be given or served by or on behalf of the Government or the Crown Agents for the purposes of these presents shall be in writing under the hand of the Governor or of the Crown Agents or one of them or any person authorised on their behalf or of the General Manager and shall either be delivered to or left for the Lessees at the office hereinbefore covenanted to be provided and maintained by them or at their registered office for the time being in England or at their principal or last known place of business in the Colony.

29. Except in cases (if any) in which these presents expressly provide to the contrary no failure or omission by the Lessees in the observance or performance of any of the stipulations agreements or conditions herein contained and on the part of the Lessees to be observed or performed shall give rise to any claim or demand against the Lessees or in any manner operate to the prejudice of the Lessees or be deemed a breach of any covenant or obligation on the part of the Lessees hereunder whether express or implied if it be shown to the reasonable satisfaction of the Governor that the default has arisen from *force majeure* that is to say any of the following causes namely: the act of God insurrection riots war strikes or combinations or lockouts of workmen not properly attributable to the improper acts or defaults of the Lessees or any other circumstances whether *quodammodo* with the foregoing circumstances or not which in the opinion of the Governor may be beyond the reasonable control of the Lessees. And if and so often as anything which the Lessees hereby agree to do within any specified time shall be delayed by any such cause such specified time shall be proportionately extended.

30. (i) In case and so often as any dispute difference or question shall arise between the parties hereto or any Government Corporation Company or person claiming through or under them respectively or between any of such parties Governments Corporations Companies or persons concerning or relating to the subject matter of these presents or any part thereof or the construction meaning or effect of these presents or of any award made in pursuance hereof or any clause or thing contained herein or in any such award as aforesaid or the rights or liabilities of any party hereto or of any such Government Corporation Company or person as aforesaid hereunder or under any such award as aforesaid then (except in any case and as to any matter for which other provision is herein made) the subject of every such dispute difference or question shall in every case on the demand in writing of either party be referred to the arbitration and award of an umpire if the parties can agree to an umpire and in case they cannot so agree then of two arbitrators one to be appointed by each party to the reference, and an umpire to be appointed by the two arbitrators or if such two arbitrators fail for one month after their appointment to appoint an umpire by His Majesty's Secretary of State for the Colonies for the time being. The decision of such umpire or arbitrators as the case may be shall be final and without appeal and binding upon all parties. If either party to any dispute difference or question make default in appointing an arbitrator within three months after the other party has given him or them notice to appoint the same the party who has appointed an arbitrator shall appoint that arbitrator to act as sole arbitrator in the

Limitation of extent of option

Rights of purchase not to prejudice other rights

Notice of stipulations to be endorsed on debentures

Property to be conveyed free from incumbrances

General Manager may delegate

Members or officers of Government not to be personally liable

Certificate of the Governor

Notice how to be given

Provision for arbitration

Mr. Hall 1914

115357/2, K.

10

Mr. [unclear]

Mr. Boulton

Sir G. Harding

Shuckburgh

Sir G. Grindle

Sir C. Davis

Sir S. Wilson

Mr. Ormsby-Gore

Lord Leval

Mr. Amery

~~SECRET~~

17 April, 1929

Gentlemen

DRAFT.

Made in 7/15023/20

C. A. for the Col's

with reference to the letter No 15023/20
of the 21st November,
1928, and previous
correspondence on the subject of the former

~~Mogadi Soda Company, Limited~~, I am
able to transmit to you, for your information,
which is being
a copy of a despatch addressed to the

G. O. of Kenya regarding the conditions

of the new leases and the surrenders of the

No 239 K. Kenya
Draft. Approved. 17.6.29

old leases of the Company's
property in Kenya.

2. I am to request that you
will notify the Company when
the completed documents have
been forwarded to the Colonial
Government for registration in
accordance with the procedure
indicated in paragraph 2 of
the letter from His Dept. of the
7th March, 1944

No 1 ^m
7/15023/28

K.

I am

etc

LEN

Magadi Soda
old leases of the Company's
property in Kenya.

2. I am to request that you
will notify the Company when
the completed documents have
been forwarded to the Colonial
Government for registration in
accordance with the procedure
indicated in paragraph 2 of
the letter from His Dept. of the
1st March, 1928.

I am

No 1^m
X/15023/28
K.

- Mr. H. M. J.
- Mr. ...
- Mr. ...
- Mr. ...
- Sir F. ...
- Sir G. Shuckburgh.
- Sir G. Grindale.
- Sir C. Davis.
- Sir S. Wilson
- Mr. Ormsby-Gore.
- Lord ...
- Mr. Amery.

X/15025/29 K.

122
8

Order No. 31

~~SL~~

17 April.

Sir

No 13 m
X/15023/28 Kenya

with ref to my dept No 349 of the

15th May, 1928, I have etc to

DRAFT.

Kenya No 259

transmit to you, for your information,

the accompanying copy of a letter from

Messrs. Sutton, Ormsby and ...

reporting that the ^{new} leases and ^{the} surrenders

of the old leases of the Magadi Soda

property in Kenya

Mr. ...

Sutton Ormsby
(No 2)
value of 4/4/28
to be to

2. When the documents
referred ~~to in the~~ ^{the enclosed} letter
have been received from the

Crown Agents for the Colonies, you

will, no doubt, ^{cause} ~~take~~ action
to be taken for registration
~~as regards registration~~ as suggested

in paragraph 2 of my despatch

No 220 of the 28th March, 1924.

No 8 m

X/15023/28 Kenya

I have
etc.

2. When the documents
referred to ~~the enclosed~~
have been received from the
Crown Agents for Col., you
will, no doubt, ^{cause} ~~take~~ action
to be taken for registration
~~as regards registration~~ as suggested

in paragraph 2 of my despatch

No 25 of the 28th March, 1921.

No 8 m

X/15023/28 Kenya

I have
etc.

123

SUTTON, OSMANNEY & OLIVER.

E. B. OLIVER

M. M. OSMANNEY

TELEGRAMS: "SUTTON, OSMANNEY, LONDON"

TELEPHONE: 2575 LONDON WALL

3 & 4, GREAT WINCHESTER STREET,

LONDON, E.C.2.

RECEIVED 5 APRIL 1929.
5 APR 1929
COL. OFFICE

13023/28.

Sir,

Magadi Soda Company Limited.

No 5

Following our letter of 20th February last

we write to report that the Leases and Surrenders of the old Lease have now been duly completed.

copy to be 207

We are forwarding the old title deeds of the Company's property in Kenya to the Crown Agents for the Colonies for the purpose of cancellation.

We are, at the same time, sending them a cheque for £322.15. 6. being the sum referred to in ~~article 3~~ of the Port Lease.

We are, also, forwarding to ~~them~~ the original Leases and Surrenders for transmission to the Government of Kenya in accordance with the procedure indicated in paragraph 3 of your letter

SUTTON, OSMANNEY & OLIVER.

E. G. OLIVER
H. M. OSMANNEY

TELEGRAPHIC ADDRESS: "OSMANNEY, LONDON"
TELEPHONE: 3051 LONDON WALL

123
3 & 4, GREAT WINCHESTER STREET,
LONDON, E.C.2.

RECEIVED April, 1929.
5 APR 1929
COL. OFFICE

13023/28.

Sir,

Egadi Soda Company Limited.

No 5
Following our letter of 20th February last

we write to report that the Leases and Surrenders of
the old Leases have now been duly completed.

10/3 to the 30/7
We are forwarding the old title deeds of
the Company's property in Kenya to the Crown Agents
for the Colonies for the purpose of cancellation.

we are, at the same time, sending them a cheque for
£322.15. 6. being the sum referred to in ~~Article 3~~
of the Port Lease.

We are, also, forwarding to ~~them~~ the
original Leases and Surrenders for transmission to
the Government of Kenya in accordance with the
procedure indicated in paragraph 3 of your letter

1234

BURTON, OSMANNEY & OLIVER.
Solicitors
10, ABchurch Lane,
LONDON, E.C. 4.
10, ABchurch Lane,
LONDON, E.C. 4.

3 & 4, GREAT WINCHESTER STREET,
LONDON, E.C. 2.

RECEIVED April, 1929.
5 APR 1929
COL. OFFICE

13023/28.

SIR,

Magadi Soda Company Limited.

No 5

Following our letter of 20th February last

we write to report that the Leases and Surrenders of
the old Leases have now been duly completed.

We are forwarding the old title deeds of
the Company's property in Kenya to the Crown Agents
for the Colonies for the purpose of cancellation.

We are, at the same time, sending them a cheque for
£322.15. 6. being the sum referred to in clause 3
of the Port Lease.

We are, also, forwarding to you the
original Leases and Surrenders for transmission to
the Government of Kenya in accordance with the
procedure indicated in paragraph 3 of your letter

Copy to Sec 287

No. 43 on
10 110727

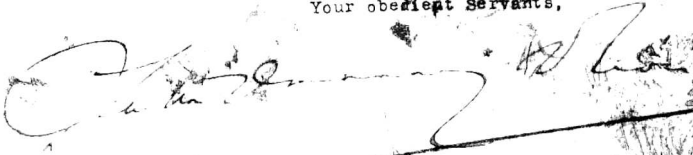
to us dated 6th October 1927.

We are at the same time transmitting to the Crown Agents for the Colonies fifty prints of each of the completed documents in accordance with paragraph 4 of their letter to us dated 20th March 1928.

We have the honour to be,

Sir,

Your obedient Servants,



The Under Secretary of State for the Colonies,
Colonial Office.

S.W.1.

SUTTON, OSMANNEY & OLIVER.

E. O. Oliver

H. M. OSMANNEY

3 & 4, GREAT WINCHESTER STREET, 125

LONDON, E.C.2.

RECEIVED
21 FEB 1929
COL. OFFICE

20th February 1929

13023/28

Sir,

Magadi Soda Company Limited.

With further reference to your letter of 3rd

November last, we beg to report that, as the result of

further communications which have taken place between the

Magadi Soda Company and the Controller, of Stamps, the

Company has decided to pay the Stamp Duty as assessed by the

Stamp Office. The amount payable has been finally agreed

at £10,546.12.0., a cheque for which we are sending to-day

to the Controller of Stamps.

we will report to you again as soon as the Leases

have been stamped and adjudicated and are ready for

completion.

We have the honour to be,

Sir,

Your obedient Servants,

Sutton, Osmanney & Oliver

The Under Secretary of State,

Colonial Office, S.W.

C.O. 533 / 385
PUBLIC RECORD OFFICE, LONDON

1927 Part 1.
Copy 5. 1146. 1/11. 27/11/29

15565/1929 Kenya

Downing Street, 126

Mr. Eastwood 13.2.

Mr. Allen 17/2

Mr. Wilkinson

Mr. Bottomley

Sir E. Harding

Sir J. Shackburgh

Sir G. Grindle

Sir C. Davis

Sir S. Wilson

Mr. Ormsby-Gore

Lord Lovat

Mr. Amery

20 February, 1929.

Sir,

With reference to my

despatch No. 848 of the 17th

November, I have, etc., to transmit

to you a copy of further corres.

with the Magadi Soda Company

regarding the stamp duties due from

the Company on the Leases and other

documents executed in March last

2. Although I am aware that in

his despatch No. 484 of the 4th

September last Sir Edward Crigg

stated that as regards the Debenture

Trust Deed he would not be prepared

to recommend any rebate. I feel that

it is due to the Company to afford

you an opportunity of reconsidering

the whole matter of the duties payable

in Kenya in the light of their letter

and

DRAFT.

Memorandum No. 17

KENYA

No. 1220

OAG

(No. 19 on 15023)

Re. Magadi Soda Co. 30.1.29
No. 1. *cancel* ✓

To. do. 1st FEB 1929
(dit. herewith) ✓

15565/1929 Kenya

Downing Street, 126

20 February, 1929.

Mr. Eastwood 13.2.

Mr. Allen 11/2

Mr. Parkinson

Mr. Bottomley

Sir E. Harding

Sir J. Shackburgh

Sir G. Ormsley

Sir C. Davis

Sir S. Wilson

Mr. Ormsby-Gore

Lord Local

Mr. Amery

(No. 25 on 15023)

RECEIVED
1929
0/19

Sir,

With reference to my despatch No. 848 of the 17th November, 1928, I have, etc., to transmit to you a copy of further corres. with the Magadi Soda Company ¹⁹²⁸ regarding the stamp duties due from the Company on the Leases and other documents executed in March last ¹⁹²⁸.

2. Although I am aware that in his despatch No. 484 of the 4th September ¹⁹²⁸ last Sir Edward Crigg stated that as regards the Debenture Trust Deed ^{had} he would not be prepared to recommend any rebate, I feel that it is due to the Company to afford you an opportunity of reconsidering the whole matter of the duties payable in Kenya in the light of their letters

DRAFT.

Amery No. 17

KENYA

No. 1020

OAG

(No. 19 on 15023)

Fr. Magadi Soda Co. 30.1.29
No. 1. *Parcell* ✓

To. do. 1 + FID. 1929
(att. herewith) ✓

2/19

and

and I shall be glad to learn whether
in the circumstances now represented
the Colonial Government ^{will} be disposed
wholly or in part to waive the sum

claimed in respect of duties in the
Colony.

I have, etc.

(Signed) L. G. AMERY

128

NOTE ON A LETTER FROM THE MAGADI SODA COMPANY OF
THE 30TH OF JANUARY 1929.

1. The outline of the history of the matter appears to be substantially correct.

2. There is no record that the liability to heavy stamp duties either in the Colony or in this country was taken up at the time the memorandum of agreement was under discussion in 1924.

3. It does not, however, appear that in any case the point ^{held} ~~was~~ have really affected the method of reconstruction, as according to the Company's own statement they were under the necessity of satisfying the shareholders of the old company, and this could only be done by winding up the old company and forming a new one, of which liability to these heavy duties was a consequence, whether foreseen or unforeseen.

4. As regards the English duties there is no ground on which the Secretary of State could intervene with the tax authorities here. The legal liability is admitted and there is no argument for a remission which would appeal to the Indiana Revenue or the Treasury.

5. As regards the Kenya duties it is no part of their submission that these duties are legally due, but they ask for relief on the ground that the payment of the large sum in question will seriously embarrass their operations in the Colony. This point has already been considered by the Colonial Government who (while recognising the advantages to the Colony and the heavy expenditure of reconstruction and re-equipment) to which the company had been put) were not prepared for the reasons stated in the enclosure to No. 19 on X.15023/26 to make any rebate.

C.O. 533 / 38 E

NOTE ON A LETTER FROM THE MAKADI SODA COMPANY OF
THE 30TH OF JANUARY 1929.

1. The outline of the history of the matter appears to be substantially correct.
2. There is no record that the liability to heavy stamp duties either in the Colony or in this country was taken up at the time the memorandum of agreement was under discussion in 1924.
3. It does not, however, appear that in any case the point ^{held} ~~was~~ have really affected the method of reconstruction, as according to the Company's own statement they were under the necessity of satisfying the shareholders of the old company, and this could only be done by winding up the old company and forming a new one, of which liability to these heavy duties was a consequence, whether foreseen or unforeseen.
4. As regards the English duties there is no ground on which the Secretary of State could intervene with the tax authorities here. The legal liability is admitted and there is no argument for a remission which would appeal to the Inland Revenue or the Treasury.
5. As regards the Kenya duties it is no part of their submission that these duties are legally due, but they ask for relief on the ground that the payment of the large sum in question will seriously embarrass their operations in the Colony. This point has already been considered by the Colonial Government who (while recognising the advantages to the Colony and the heavy expenditure of reconstruction and re-equipment to which the company had been put) were not prepared for the reasons stated in the enclosure to No. 19 on X.15023/28 to make any rebate.

TELEGRAMS: VICTORIA 4444.
MAGADI: ZODABADI, LONDON.

129
WORKS: MAGADI, KENYA COLONY
KILINDINI

The Magadi Soda Company Limited.

DIRECTORS:-
R. ON. LOBE MELORFF, P.C. D. Sc., F.R.S. (Chairman)
S. E. HOBBS, Esq. (Deputy Chairman)
S. E. KALLEN, Esq.
S. B. ROOSTON
W. F. LUTYENS
H. F. MARRIOTT
D. MARSH
L. ODL, G. P. POLLITT, Esq.
C. D. SAUNDERS

OUR REFERENCE
YOUR REFERENCE 15023/28.

Imperial Chemical House,
Millbank,

London, S.W.1

RECEIVED
31 JAN 1929
COL. OFFICE

30th January 1929.

The Under Secretary of State,
Colonial Office,
London, S.W.1.

Dear Sir,

STAMP DUTIES.

1. The question of the Stamp Duties upon the Leases and other documents executed in March of last year is causing our Board grave concern, and we are writing to bring the whole matter to your attention in the hope that you will give favourable consideration to our suggestion that the burden of the proposed duties constitutes a serious obstacle to the progress of the Company, and is not in the best interests of the Colony generally.

2. The duties now claimed are shown in detail on the attached Statements marked "A" and "B" respectively. The attached Statement "C" sets out the duties which were paid on the formation of the new Company amounting to £9,798. 6. 3. while the English duties (Statement "A") now claimed by the

Received
Copy Sec 120
20 FEB 1929

The Under Secretary of State.

30.1.29.

Controller of Stamps amount to £10,548. 2. 0. The Kenya duties, (Statement "B") are estimated by us at £3,315. 12. 0., making a total of £23,862. 0. 3., which has been paid by, or is claimed against, the Company for stamp duties in connection with its formation and the transfer of the assets of the old Company. Before indicating the reasons for our respectful submission that these duties constitute an unjustifiable and entirely unforeseen burden upon the Company, we think it desirable to review as briefly as possible the circumstances under which the claims for duty have arisen.

3. The Company was formed, as you are aware, to take over the undertaking and assets of an existing Company of the same name carrying on the manufacture of chemicals on a large scale in Kenya Colony. The old Company, owing to financial difficulties, found it impossible to carry on the business and observe the conditions of the Leases, and consequently the leases became liable to forfeiture. It was part of the arrangement between the new Company and the Colonial Office that new Leases should be granted by the Crown Agents, comprising the property originally demised to the old Company, but varying in certain respects the terms of the old Leases.

The Under Secretary of State.

30.1.29.

Controller of Stamps amount to £10,548. 2. 0. The Kenya duties, (Statement "B") are estimated by us at £2,315 12. 0., making a total of £22,862. 0. 2., which has been paid by, or is claimed against, the Company for stamp duties in connection with its formation and the transfer of the assets of the old Company. Before indicating the reasons for our respectful submission that these duties constitute an unjustifiable and entirely unforeseen burden upon the Company, we think it desirable to review as briefly as possible the circumstances under which the claims for duty have arisen.

3. The Company was formed, as you are aware, to take over the undertaking and assets of an existing Company of the same name carrying on the manufacture of chemicals on a large scale in Kenya Colony. The old Company, owing to financial difficulties, found it impossible to carry on the business and observe the conditions of the Leases, and consequently the leases became liable to forfeiture. It was part of the arrangement between the new Company and the Colonial Office that new Leases should be granted by the Crown Agents, comprising the property originally demised to the old Company, but varying in certain respects the terms of the old Leases.

The Under Secretary of State.

30.1.EV.

4. Protracted negotiations took place between your Department and ourselves in regard to the terms of the new Leases, and it was not until last March that the documents were executed. During the course of the negotiations we exhibited to you our reluctance to permit Surrenders of the interests of the old Company to be executed, having in mind the question of the heavy stamp duty involved. We suggested

XF 4255/26

for instance in our letter of the 18th August 1926 that in order to avoid the necessity for Surrenders the forfeitures incurred by the old Company should be put into active operation. This suggestion, however, was not acceptable to you.

F. d. no. 27
 copy sent to
 Gov. in no. 38

5. We also made the suggestion in our letter of the 13th October, 1927, that the necessity for Surrenders might be avoided if the execution of the new Leases was delayed until after the final dissolution of the old Company. You were good enough to refer this point to the Governor of Kenya, and on 23rd January 1928 you sent us a Schedule prepared by the Commissioner of Lands, Kenya, containing an approximate statement of the Stamp Duties and Registration fees payable in the Colony. This Schedule showed that the duty on the Surrenders would be 20/- only, while the duties

10/10/27

(No 48)

75023/24

(No 3)

The Under Secretary of State.

30.1.29.

on the new Leases were estimated at amounts which were mere or less nominal. On the receipt of this Schedule we had the Surrenders executed by the old Company and ourselves sealed the new Leases, forwarding all the documents to Messrs Sutton, Osmanney & Co., the Solicitors to the Crown Agents, for execution by their Clients.

6. It was not until the documents were in course of execution that the legal obligation to have them stamped in England became apparent to the Company. Even so, it was not appreciated that any but nominal duties would be attracted, and it was a matter for considerable surprise when the Company received from Messrs Sutton, Osmanney & Co., a copy of certain correspondence which has passed between that firm and the Controller of Stamps revealing the existence of a claim for very heavy duties. We are enclosing for your perusal a copy of the correspondence in question and you will note that Messrs Sutton, Osmanney & Co., from the outset adopted the attitude that the claim was not well founded and resisted it, until the persistence of the Controller necessitated our being informed of the position.

7. The serious nature of the claim and the attitude taken up by Messrs Sutton, Osmanney & Co., led us to think

The Under Secretary of State.

30.1.29.

That an Opinion of Counsel on the matter was desirable, and accordingly Mr. Evershed was consulted. We obtained from him two Opinions, the first dealing only with the question of English Duties, and the second reviewing the composite question of English and Kenya duties in its widest aspect. In both Opinions Counsel advised that the claim of the Controller was incapable of resistance and we are therefore not in a position to contest the matter from a technical and legal point of view. * Copies of both Opinions will gladly be sent you should you wish to peruse them.

8. We have now outlined the history of the matter so far as it has proceeded, and faced with these very heavy claims we submit that on the grounds of hardship, these duties should be remitted either wholly or in part.

9. Briefly, the basis of our submission is as follows:-
First: These heavy duties were entirely unforeseen both by your Department and by Brunner, Mond & Co., Limited when the reconstruction of the old Company was the subject of negotiation in 1924. The old Leases had been stamped both in England and the Colony with purely nominal duties, and it was perhaps this fact which caused all parties to overlook

The Under Secretary of State.

30.1.25.

*Gov. 20686
1925
para: 7*

the heavy duties attracted by the new Leases. Moreover, in a letter from your Department of 1st June 1925, it is stated that as far as their validity in the Colony was concerned there was no necessity for the documents to be stamped in England. Whatever the reason for the oversight may have been, it is a reasonable supposition that had the claim been visualised the reconstruction would have been carried out on different lines. We are unable to give a definite statement as to the reasons for the mode of reconstruction adopted, the Directors responsible being no longer with us, but from the papers it would appear that there was a certain amount of opposition to the Scheme from shareholders of the old Company, and in order to make the Scheme binding on the dissentients, the Company went into liquidation and the present Company was formed. Had it not been necessary to provide for the dissentient minority, the old Company could have been kept in existence, the rights of the old shareholders being arranged by consent, and by this means not only would the £998. 6. 3., paid on the formation of the Company have been saved but also all the duties on the Surrenders and Leases now demanded. Parliament has in recent legislation recognised the difficulties

The Under Secretary of State.

30.1.29.

of a situation of this nature and Section 55 of the Finance Act 1927 contains provisions which, had they been operative in 1924, would have relieved the Company of the greater portion of the duties paid on registration and of those now claimed.

(2) 10. Secondly, we would submit that the payment at this stage of roughly £14,000 in stamp duties will seriously embarrass the Company and hamper the work of development which it now has in hand.

11. Further we think it like to add that from the time the new Company commenced operations up to date, some £80,000 of Capital Expenditure has been incurred in developing the property, and a further £25,000 will have been spent within the next six months. In addition some £36,000 will have been spent in the same period on major repairs, to plant and machinery. The bulk of the money for these operations has been provided by loan, and the prospect of finding a further large sum upon which there can be no return whatever causes our Board grave anxiety, and has prompted us to address this letter to you.

12. We do feel that the interests of the Colony as well as of the Company and its shareholders would be served

MAGADI SODA CO. LTD.

ENGLISH STAMP DUTIES.

(Claimed by the Controller)

17664	(The Port Lease)	Lease Duty on consideration of Premium	253,528. 0. 0 322. 15. 0	539. 0. 0.
17665	(The Railway Lease)	(1) Lease duty on consideration of £525,000		5,250. 0. 0.
		(2) Bond Covenant .. duty on the minimum freight charges payable under clauses 4 (IV) (A) and 10 limited by Commissioners' practice to payments during twenty years.		
		3.225/365 years 50 000 tons at 18/- = 1162,739		
		10.140/365 " 100,000 " 392,000 tons at 17/- = 1,558,341		1,944. 5. 0.
		(3) Lease duty of 5/- per annum.		5. 0. 0.
				7,194. 11. 0.
17666	(The Lease Lease)	(1) Lease duty on consideration of £221,754		2,217. 0. 0.
		(2) Lease duty on royalty rent 50,000 tons at 2/- for 2 years = 110,000		
		Lease duty on royalty rent of 100,000 tons at 2/- for 92 years 920,000		
		94 years term un- 94) 930,000 expired.....		
		Average royalties for term 9,893		594. 0. 0.
		(3) Lease duty on rent of 20/- per annum		6. 0. 0.
				1,912. 6. 0.
		Three duplicates at 5/- each.....		15. 0. 0.
		Three Surrenders at 10/- each		1.10. 0.
		Total duty ... £10,548. 2. 0.		

MAHADI SODA COMPANY LIMITED.

KENYA STAMP DUTIES.
(Estimated by the Company)

	Stamp Duties	Registration Fees.
Three Surrenders.	3. 0.	18. 0.
Order of Court winding up of old Company.	Nil	18. 0.
Debenture Trust Deed for £500,000 @ 1% ✓	1,250. 0. 0.	
(Note: We are pressing for the duty on this Deed to be remitted)		
Sale & Purchase Agreement at 2% on the consideration - other than the Leases and property outside the Colony - namely 297,812. 7. 7.	1,956. 10. 0	
Lake Lease rent and royalties	97. 11. 0.	nominal only 1. 0. 0.
Railway Lease rent.	1. 0.	1. 0. 0.
Port Lease rent and premium	<u>6. 11. 0.</u>	<u>1. 0. 0.</u>
	3,310. 16. 0.	4. 16. 0.
	<u>4. 16. 0.</u>	
Total Stamp Duties payable in the Colony.	3,315. 12. 0.	

MAHADI BODA COMPANY LIMITED.

KENYA STAMP DUTIES.
(Estimated by the Company)

	Stamp Duties	Registration Fees.
Three Surrenders.	3. 0.	18. 0.
Order of Court winding up of old Company.	Nil	18. 0.
Debenture Trust Deed for £500,000 @ 1% (Note: We are pressing for the duty on this Deed to be remitted)	1,250. 0. 0.	
Sale & Purchase Agreement at 2% on the consideration - other than the Leases and property outside the Colony - namely £97,812. 7. 7.	1,956. 10. 0.	
Lake Lease rent and royalties	97. 11. 0.	nominal only 1. 0. 0.
Railway Lease rent.	1. 0.	1. 0. 0.
Port Lease rent and premium	6. 11. 0.	1. 0. 0.
	3,310. 16. 0.	4. 16. 0.
	<u>4. 16. 0.</u>	
Total Stamp Duties payable in the Colony.	3,315. 12. 0.	

CONTROLLER OF STAMPS OFFICE
(Adjudication Branch Room 16)
INLAND REVENUE
SOMERSET HOUSE, LONDON W.C.2.
2nd April 1928.

Gentlemen,

Adjudication No. 17664-6/28
Magadi Soda Company Limited.

In connexion with this assessment of duty on the three leases, I have found it necessary to refer to the agreement for sale of 12th February 1928, from which I see that of a total consideration of £1,119,137, the value attributable to the Magadi Railway, Water Supply Works, Plant and Pier Works, Buildings and machinery was £269,100. It would seem that all or some part of this latter amount is dutiable but before making an assessment, I shall be obliged if you will state whether the leases under adjudication are granted to the New Company as assignees of the Old Company or whether they are granted by direction of the Old Company. If the former was the case, the assignments should be forwarded for inspection. If, on the other hand, the latter was the fact, the leases are apparently chargeable with duty as on a consideration of £269,500., or so much thereof as represents land and fixed machinery.

Yours faithfully,

Adjudicating Officer.

Messrs. Gulton Ommanney & Gliver.

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CONTROLLER OF STAMPS OFFICE,

(Adjudication Branch, Room 16)

INLAND REVENUE

SOMERSET HOUSE, LONDON, W.C.2.

5th April 1928.

Gentlemen

Adjudication 17604-6/28
Magadi Soda Company Limited.

I beg to acknowledge the receipt of your letter of the 3rd instant, but regret that I cannot assess the duty on the information at present before me.

I shall be obliged to receive if a statement can be furnished showing how the New Company obtained the benefit of the rights of the Old Company to have leases granted. The statement should be supported by the production of any documents, formal or informal, between the Old Company and its liquidator and the New Company and either of those Companies and the Crown Agents.

Yours faithfully,

Adjudicating Officer.

Messrs. Sutton & Co. & Co. & Co.

CONTROLLER OF STAMPS OFFICE,
(Adjudication Branch, Room 14)
INLAND REVENUE,
SOMERSET HOUSE, LONDON, W.C.2.
17th April, 1928.

Gentlemen,

Adjudication No. 17664-6/28.
Magadi Soda Company Limited.

I beg to acknowledge receipt of your letter of the 11th instant. As the old leases have been surrendered, it seems to me that ad valorem duty should have been paid thereon under Section 54 Stamp Act on the Balance Sheet value of the land and fixed machinery. If they were not so stamped I propose to assess the leases under adjudication with duty (as on a consideration for the grant of a lease) on so much of the £869500 referred to in my letter of the 2nd instant as is attributable to all but purely loose effects. I shall be obliged therefore if you will furnish me with the required apportionment of that amount between (a) Railway, Water Supply Port and Pier Works, Buildings and fixed machinery, and (b) effects in an actual state of severance.

Yours faithfully,

Adjudicating Officer.

Messrs. Sutton, Ommarney & Oliver.

3 & 4, Great Winchester Street,
London, E.C.2.

20th April, 1928.

Sir,

Adjudication No. 17664-6/28.
Magadi Soda Company Limited.

We beg to acknowledge receipt of your letter of 17th April, but entirely fail to understand the basis of this claim for stamp duty.

Surely the stamp duty on leases is assessable on the consideration for granting the leases, which consideration must accrue between the lessors and the lessees.

No drawbacks of any kind accrue to the lessors in the present case, beyond those expressed in the leases: nor are there any collateral agreements on the subject.

It may be that the Government of Kenya could have claimed some further consideration in respect of property referred to in your letter; but this was, in fact, not done. We submit that the stamp duty on these leases is payable only on the considerations actually reserved by the leases. If a man lets property worth £1,000 a year at a rent of £100 a year, can stamp duty be claimed on £1,000 a year? Surely it is payable on the actual rent.

We have not in our possession the information asked

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- 2 -

for in the last part of your letter, and shall be obliged to apply to the Company for it, if insisted upon. Before doing this, however, we submit that the claim for additional stamp duty is not well founded.

We are, Sir,

Yours faithfully,

Sutton, Ommanney & Oliver.

The Adjudicating Officer,
Controller of Stamps Office,
(Adjudication Branch, Room 16)
Somerset House, W.C.2.

3 & 4, Great Winchester Street,

London, E.C.2.

26th April, 1928.

Sir,

Adjudication 17664 -6/28.
Magadi Soda Company Limited.

We have to acknowledge receipt of your letter of 25th April and are forwarding a copy of the correspondence on this subject to the Magadi Soda Co. Ltd.

We note what you say as to the conditions but cannot see that there was any consideration moving to anybody in respect of the leases, beyond the considerations actually mentioned in them.

We are, Sir,

Your obedient servants,

Sutton, Comptroller of Stamps

The Adjudicating Officer,
Controller of Stamps Office,
(Adjudication Branch, Room 16)
Inland Revenue,
Somerset House, W.C.2.