

1932

Kenya

No. 18074

(Part 2.)

SUBJECT

C0533/422

Magadi Soda Company Ltd

Previous

Part 1

Subsequent

3200/33

State that the deed varying the covenants of the Leases has been executed. Enclose six copies of the Deed and have retained the original.

*[Handwritten scribbles]*

1 Copy with 3 copies encl. to Gov.

1 F Conf. ref 48

2 copies of Deed R 147

*[Signature]*  
26/8

*[Signature]*  
21/8

at all

45 to Gov Conf (2) A/1 29 AUG 1932  
(1/1/42 + 3 co. encl)

App. recirculated to  
the Director's minute of 23/7/32  
K 147 1/9/32

? Remind of on the basis of  
the Director's minute of 23/7

*[Signature]*  
1/9/32

Perhaps subject to  
see a letter in the file  
and draft hereinto

*[Signature]*  
and vice versa

*[Signature]*

W. G. 2.9.32

State that the deed varying the covenants of the Leases has been executed. Enclose six copies of the Deed and have retained the original.

3 Copy with 3 copies encl to you

LF Conf. ref 40

JH Allen  
26/8

JH Allen  
26/8

at all

2 copies of  
Deed  
R 47.

45 to Gov Conf (2) — A/L 29 AUG 1932  
(17/22 + 3 co encl)

for associated reference  
to Director's minute of 23/7/32

(29) 173

Remind of minutes of  
Director's minute of 23/7

JH Allen  
19/32

Perhaps it is desirable to send  
you a letter in the form of

the draft herewith

which  
has been enclosed

JH Allen

19/32

W. G. 29.8.32

By air mail  
7/9/32

29/17

44 to Mr T. Rymer - com - 5. 9. 32

WESTROTE. UNDER STATUTE

45- Gov Kenya - 106 Conf. 18/8/32  
points divergence between the CA &  
Seymour's & Schick's Comments on  
Clause affecting "Common Salt" &  
the "minimum guarantee" to be  
secured for extension in the event of the  
divergence being extended beyond 3/4/32

The deed enclosed with 42.

declares in para. 1 that the provisions shall remain in force until the 31st day of October, 1932. As from the latter date the provisions therein contained shall cease to have effect unless before such latter date the Crown Agents and the Lessees agree either by supplemental deed or Memorandum endorsed hereon or by letters exchanged between the parties that the period of the operation of such provisions shall be extended for some further period. The Governor now indicates that the General Manager considers the minimum guarantee in the deed to be a radical departure from the terms of the lease, and requests that in negotiating an extension of the period of the deed it should be strongly advocated that the minimum guarantee should be based upon a tonnage basis and that this point should not be waived without reference to him.

A minimum tonnage basis was suggested in the Governor's telegram at (12), but Mr. Marriott's negotiations with the

Magadi

Magadi Soda Company were compromised by leakage in Kenya, vide (16), with the result that Mr. Marriott had to make the best terms he could.

It will be difficult now to propose any modification of the deed to the detriment of the Company, unless it can be shown that their position has definitely improved since April, 1932, when the deed was negotiated.

In the first instance Mr. Marriott's views should be obtained on the proposed modifications.

As regards the existing <sup>salt</sup> concessionaires and the Kenya Salt Co. mentioned in para. 3, the position is not clear. The terms of a salt concession for a period of 20 years renewable for 40 years, held by a Mr. Blain are given at (5) in 15727/29 Kenya (supplied by Marriott), but at (10) in that file the Governor reported that it was physically impossible for the terms of the concession to be fulfilled by the 6th December, 1929, and that Mr. Blain had been informed that the time limit expiring on that date was regarded as being of the essence of the contract, and that the Govt. of Kenya proposed, if there were a breach in that regard, to determine the concession. It was also stated that it was proposed to issue, on the termination of the Blain concession, a public invitation for <sup>Blain</sup> ~~Blain~~ for a coastal salt concession on terms yet to be considered. There is, however, no information here as to whether a coastal salt concession was actually granted or whether the Blain concession was actually determined.

Mr. P. S. ...



Sir J. Campbell is very ill,  
& I have handed the draft

I am afraid things have  
not worked out here very  
well, it is to be hoped the above  
arrangement is probably the best  
one possible under the circumstances  
and I am sure you will be satisfied  
with the result.

Yours faithfully,  
J. H. Marriott

By Order of the Board of Directors  
27th Sept 1932

Gov. Sec. No. 133 dated 24/9/32  
In reply to No. 13, agreed to proposal as to  
renewal of license deed

To thank you Sir C. B. for the money  
in my check which has been from the Receipt  
Side of the account; no other  
business with it, as received

The amount was paid of No. 13

*[Handwritten signature]*

Yours faithfully,  
J. H. Marriott

49. H.F. Marriott. Conf. .... 27th Sept. 32.

States that it will be necessary to consider the  
position of the Coy. for the ensuing year to see what  
can be done to meet the requirements of the Lease and  
the present modifying agreement, and to take stock of  
the Coy's financial position. Submits detailed comments.

50. H.F. Marriott. SECRET. (U.O.) ..... 28th Sept. 32.  
Supplements No. 49 regarding the present position of  
the Nagadi Soda Coy.

51. Nagadi Soda Coy. 29 Sept 32  
Information has been received of ask from Nagadi  
in the year commencing 1st Nov. next will  
probably fall to 13,000-20,000 tons, & in the event  
proposes that the Supplemental Deed shall be  
renewed for 2 years on its entirely until the  
expiration that the minimum price of 100 lbs of  
\$2,000 shall be spread over the next two years  
instead of over only one year as at present.

51A  
Enclosures submitted; drafts for  
next draft. Drafts will be available for  
the Director, if required (Saturday)  
provided that a notice is sent to his office today.

P.S. Note that a check will be sent to  
S. J. at 5.0 pm today. Copy to Mr. H.  
Chief of the Dept. to be for. It is noted that S. J.'s  
concern may be expressed by telegram.

J. H. Marriott  
30/9/32

Mr. H. Marriott  
30/9/32  
I am very sorry that  
should be needed; but I am sure you will  
be satisfied with the information in the  
note. I am, however, sure it is necessary to  
be satisfied to have a position which there is any  
change of course.

Yours faithfully,  
J. H. Marriott  
There is no necessity to trouble

Rec'd [unclear] with this [unclear]. I  
have passed the drafts.

X The Gov of State should however  
see on return

51/6  
30.9.32

By air mail 52 To Gov Conf (w/cas 49+51) Cons 3 OCT 1932  
4/10/32

By air mail 53 To Sir J. Byrne - w/c 50 - cons - 3-10-32  
4/10/32

54 To Magadi Soda Co. - 51 and. - 3-10-32

Handwritten signature/initials

55 Gov. Kenya - Tel. 187 Conf - 17/10/32  
Ref. No. 53. In the circumstances  
appears to be no alternative but  
to accept Company's proposals.

DESTROYED UNDER STATUTE

Del. for [unclear]  
will [unclear] the [unclear]

on Monday morning

57  
15

15  
10  
32

56 To Magadi Soda Co - Cons - 17/10/32

57  
Handwritten mark

To P.A. - w/c 51 & 56 - A.L. - 18.10.32

58. Magadi Soda Co. 21<sup>st</sup> October 32.  
State that it is asked to submit draft deed incorporating  
terms of agreement on the course of the next few days.

It seems unnecessary for  
the former with a new design  
proposed.

Copies to [unclear] 57/115. P. [unclear]  
22/10/32

Gov. has not had  
56; but had letter and  
copy 56 + 58 to Gov. 25.10.32

59 To Gov. Conf. (w/cas 56+58) A/L 7 OCT 1932  
5-5-Consolid

60 To P.A. - w/c 55 - A.L. - 27.10.32

Handwritten mark

61. The Ogajadi Soda Co. 27 Oct 32

Encls. two copies of draft of news deed, & requests that if approved a copy may be returned when arrangements will be made for improvements to be prepared for signature.

Duncan  
Allen

The enclosure to 61 reproduces the enclosure to 42 textually, except for the variation shown in red pencil, which has been introduced to give effect to the arrangement proposed in 51 as set in 5b.

In the circumstances it seems hardly necessary to trouble Messrs. Sutton, Dickinson, and we may proceed as suggested in the last para. of 61.

W. Duncan  
28/10

The C.A. are concerned in this, and I think it has been so through them with usual care.

31/10/32 W. Duncan  
The C.A. are concerned in this, and I think it has been so through them with usual care.

31/10 atax

DESTROYED UNDER STATUTE  
Ogajadi Soda Co. (61 and)  
C.A. 1st/61 & dft. deed in orig. } 3/12  
3/11/32

62. Crown Agents. 20 Dec 32  
DESTROYED UNDER STATUTE. 6 copies of Deed executed with the Ogajadi Soda Company.

? copy with 3 copies of deeds, and copy 61 62 63 to Governor L F Corp. Reference 59 and send one copy to Mr Remott 56

J. E. P. Smith  
22/11/32

W. Duncan  
22/11/32

(5) To Gov. Conf - A/1 29 DEC 1932

(N/Cs 61, 62, 63 & 64 N/Dec 32)

63. To Mr. G. Marriott S.O. 29.12.32  
(no. O. encl. to No. 64)

DESTROYED UNDER STATUTE

W. Duncan

64. A. F. Jamcott 5/30 Dec 32  
Acto. No 66 & states that Company's business has improved.

DESTROYED UNDER STATUTE

W. Duncan  
31/11/32



DUPLICATE OR COUNTERPART  
ORIGINAL STAMPED WITH

STAMP  
ten shillings  
5. 12. 32.

THIS DEED made the first day of December One thousand nine hundred and thirty-two BETWEEN THE CROWN AGENTS FOR THE COLONIES (hereinafter called "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 Imperial Chemical House Millbank 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 THIS DEED IS SUPPLEMENTAL to the following documents  
(1) a Lease (hereinafter called "the Magadi Lease") dated the Twentieth day of March One thousand nine hundred and twenty-eight made between the same parties as are parties hereto and in the same order whereby certain lands at Lake Magadi and Lake Natron in the Magadi Province of the Colony and Protectorate were demised to the Lessees for a term of Ninety-nine years from the First day of November One thousand nine hundred and twenty-four 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 Magadi Soda deposits as therein defined (2) a Lease (hereinafter called "the Railway Lease") also dated the Twentieth day of March One thousand nine hundred and twenty-eight and made between the same parties as are parties hereto and in the same order but executed after the Magadi Lease whereby 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 had been provided by the Government for the purpose of the construction and working of the said Railway were demised to the Lessees for a term of ninety-nine years from the First day of November One thousand nine hundred and twenty-four 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 (3) a Lease (hereinafter called "the Port

STAMP  
Five Shillings  
1. 12. 32.

9

Lease whereby 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 and the Conveyor plant and apparatus used in connection therewith and the Pier adjacent thereto were demise to the Lessees for a term of ninety-nine years from the First day of November One thousand nine hundred and twenty-four subject to the payment of the rent thereby reserved and the covenants on the part of the Lessees and conditions therein contained and (4) a Deed (hereinafter called "the Deed of Variation") dated the Eighteenth day of July One thousand Nine hundred and thirty-two and made between the same parties hereto and in the same order whereby certain modifications and variations in the covenants contained in the Magadi Lease and the Railway Lease were agreed upon between the parties and were to have effect from the First day of November One thousand nine hundred and thirty-one until the Thirty-first day of October One thousand nine hundred and thirty-two

AND WHEREBY the Government and the Lessees are desirous of making for the period hereinafter mentioned such modifications and variations in the covenants contained in the Magadi Lease and the Railway Lease as are hereinafter expressed

NOW the Crown Agents acting for and on behalf of the Government and the Lessees hereby mutually covenant and agree and IT IS HEREBY DECLARED as follows:-

1. The provisions herein contained shall cease into force as on and from the First day of November One thousand nine hundred and thirty-two (as from which date the provisions of the Deed of Variation shall cease to have effect) and shall remain in force until the Thirty-first day of October One thousand nine hundred and thirty-four. As from the latter date the provisions herein contained shall cease to have effect unless before such latter date the Crown Agents and the Lessees agree either by supplemental deed or memorandum endorsed hereon or by letters exchanged between the parties that the period of the operation of such provisions shall be extended for some further period.
2. The royalties payable under the Magadi Lease shall be deemed to be at the rate of sh. 1.50 in respect of every ton of raw soda, and in respect of every ton of soda, soda products or soda contained in

DUPLICATE OR COUNTERPART  
ORIGINAL STAMPED WITH

STAMP  
ten shillings  
5. 12. 32.

STAMP  
Five Shillings  
1. 12. 32.

THIS DEED made the first day of December One thousand nine hundred and thirty-two BETWEEN THE CROWN AGENTS FOR THE COLONIES (hereinafter called "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 Imperial Chemical House Millbank 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 THIS DEED IS SUPPLEMENTAL to the following documents

(1) a Lease (hereinafter called "the Magadi Lease") dated the Twentieth day of March One thousand nine hundred and twenty-eight and made between the same parties as are parties hereto and in the same order whereby certain lands at Lake Magadi and Lake Naivasha in the Magadi Province of the Kenya Colony and Protectorate were demised to the Lessees for a term of Ninety-nine years from the first day of November One thousand nine hundred and twenty-four 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 Magadi Soda deposits as therein defined (2) a Lease (hereinafter called "the Railway Lease") also dated the Twentieth day of March One thousand nine hundred and twenty-eight and made between the same parties as are parties hereto and in the same order but executed after the Magadi Lease whereby 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 had been provided by the Government for the purpose of the construction and working of the said Railway were demised to the Lessees for a term of ninety-nine years from the First day of November One thousand nine hundred and twenty-four 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 (3) a Lease (hereinafter called "the Port Lease") also dated the Twentieth day of March One thousand nine hundred and twenty-eight and made between the same parties as are parties hereto and in the same order but executed after the Railway

Lease whereby 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 and the Conveyor plant and apparatus used in connection therewith and the Pier adjacent thereto were demised to the Lessees for a term of ninety-nine years from the First day of November One thousand nine hundred and twenty-four subject to the payment of the rent thereby reserved and the covenants on the part of the Lessees and conditions therein contained and (4) a Deed (hereinafter called "the Deed of Variation") dated the Eighteenth day of July One thousand Nine hundred and thirty-two and made between the same parties hereto and in the same order whereby certain modifications and variations in the covenants contained in the Magadi Lease and the Railway Lease were agreed upon between the parties and were to have effect from the First day of November One thousand nine hundred and thirty-one until the Thirty-first day of October One thousand nine hundred and thirty-two

AND WHEREAS the Government and the Lessees are desirous of making for the period hereinafter mentioned such modifications and variations in the covenants contained in the Magadi Lease and the Railway Lease as are hereinafter expressed

NOW the Crown Agents acting for and on behalf of the Government and the Lessees hereby mutually covenant and agree and

IT IS HEREBY DECLARED as follows:-

1. The provisions herein contained shall come into force as on and from the First day of November One thousand nine hundred and thirty-two (as from which date the provisions of the Deed of Variation shall cease to have effect) and shall remain in force until the Thirty-first day of October One thousand nine hundred and thirty-four. As from the latter date the provisions herein contained shall cease to have effect unless before such latter date the Crown Agents and the Lessees agree either by supplemental deed or memorandum endorsed hereon or by letters exchanged between the parties that the period of the operation of such provisions shall be extended for some further period.

The royalties payable under the Magadi Lease shall be deemed to be at the rate of sh. 1.50 in respect of every ton of raw soda, and in respect of every ton of soda, soda products or soda contained in manufactured soda (as in the Magadi Lease defined) transported from Lake Magadi (whatever the aggregate tonnage may be) and subclauses (i) (ii) and (iii) of Clause 4 of the Magadi Lease shall cease to have effect.

3. The Lessees shall on or before the Thirty-first day of December in the years 1933 and 1934 pay to the Government or as the Government shall direct royalties at the rate aforesaid on all such goods so transported in the twelve months ended on the preceding Thirty-first day of October and such royalties shall in the Magadi Lease be deemed to be the royalties therein referred to as thereby reserved.
4. Except for the proviso in the last paragraph of Clause 5(v) of the Magadi Lease the provisions of Clause 5(v) of the Magadi Lease shall cease to have effect and the reference in that proviso to a royalty shall be deemed a reference only to such royalty as is payable under the provisions of this deed.
5. Except for the proviso in the last paragraph of Clause 4 (iv) of the Railway Lease the provisions of Clause 4 (iv) of the Railway Lease shall cease to have effect and the reference in that proviso to freight shall be deemed a reference only to such freight as is payable under the provisions of this deed.

6. Clauses 10 and 18 of the Railway Lease shall cease to have effect and in substitution for the provisions therein contained the following provision shall have effect, namely:-

The rate of freight chargeable on soda goods (as in the Railway Lease defined) consigned by the Lessees direct from Lake Magadi or any other point on the Railway to the Magadi Pier and Depot Works at Kilindini by the Railway to Magadi Junction and thence over the Kenya and Uganda Railway shall be sh. 18.50 per ton on the actual tonnage consigned. Provided Always that if the aggregate amount payable by the Lessees in respect of soda goods so consigned to Kilindini and in respect of any soda goods (including common salt) consigned outwards from Lake Magadi to any other destination (for which the Lessees shall pay the scale charge from time to time in force on the Kenya and Uganda Railway as provided by Clause 11 of the Railway Lease) shall amount to less than Thirty-seven thousand pounds in the period of twenty-four months covered by this agreement the Lessees shall make good to the High Commissioner for Transport the difference between the aggregate amount payable by the Lessees on goods actually consigned and the fixed sum of Thirty-seven thousand pounds. For the purpose of securing the said minimum payment of Thirty-seven thousand pounds the Lessees shall pay to the High Commissioner for Transport the sum of One thousand five hundred and forty-one pounds thirteen shillings and fourpence at the end of each calendar month or such greater sum as shall be due, having regard to the tonnage rate above provided, in respect of consignments.

- made from Lake Magadi during the month in question provided always that if the amount payable in any month in respect of soda goods (including common salt) so consigned shall amount to more than One thousand five hundred and forty-one pounds thirteen shillings and fourpence no payment in excess of the said fixed sum shall be made to the High Commissioner for Transport until credit has been given to the Lessees for the amount by which the fixed payments in previous months have exceeded the amounts payable in such months by virtue solely of the tonnage consigned from Lake Magadi in such months.
7. The sums payable for freight as hereinbefore provided shall in the Railway Lease be deemed to be the charges therein referred to as the charges for freight therein specified.
  8. The Magadi Lease and the Railway Lease and the covenants conditions and provisions therein respectively contained shall during the subsistence of the agreement hereby made operate and have effect as if the modifications and variations hereby made in them respectively had been embodied in the Lease of which the provisions have been hereby modified and varied but otherwise and in all other respects the Magadi Lease the Railway Lease and the Port Lease shall remain in full force and unaffected by any provision herein contained.
  9. The provision for arbitration contained in Clause 14 of the Magadi Lease and Clause 30 of the Railway Lease shall apply to this deed as if the provisions herein contained were contained in the Lease of which the provisions are hereby varied and as if the construction meaning or effect of this deed came for all purposes within those Clauses.
  10. The costs of the preparation execution and stamping of this deed (including the cost of stamping the same and effecting entries relating thereto in the Registry of Titles for the Colony of Kenya if the Lessees shall decide so to do) shall be borne by the Lessees.

I N W I T N E S S whereof one of the Crown Agents has hereunto set his hand and seal and the Lessees have caused their Common Seal to be hereunto affixed the day and year first above written.

SIGNED SEALED and DELIVERED by  
Sir William Frederick Gowers  
one of the Crown Agents for the Colonies  
in the presence of;

H. C. M. RANSOM

of 4, Millbank, S.W.1.

Civil Servant.

W. F. GOWERS

SEAL.

THE COMMON SEAL of The Magadi Soda Company  
Limited was herunto affixed in the  
Presence of:-

SEAL.

J.G. Nicholson Director.

A.E. Gawler Secretary.

Retained

64/18074/32

DATED

1st. DECEMBER

1932

COLONY AND PROTECTORATE OF KENYA

THE CROWN AGENTS FOR THE COLONIES

and

THE MAGADI SODA CO. LTD.

D E E D

varying covenants in leases in respect of: lease periods 1932/35 and 1933/37.



C. O.

18047/32 Kenya

13

63

*Answered by No 64*

3 November 1932

- Mr. Priestman
- Mr. *Draxton*
- Mr. *...*
- Mr. Parkinson
- Mr. Tomlinson
- Sir C. Bottomley
- Sir J. Shuckburgh
- Perm. U.S. of S.
- Parly. U.S. of S.
- Secretary of State

Gentlemen,

DRAFT.

CROWN AGENTS FOR THE COLONIES

*75 (60)*

*With reference*  
~~I am etc. to refer~~ to the letter  
 from this Dept. of the 27th of Oct,  
 regarding the extension and  
 modification of the provisions of the  
 supplemental Regulations the 18th of  
 July 1932 executed with the ~~Magadi~~  
 Soda Co. Ltd. *Company*

*copy to Mr. (S) 1932*

(51)

*(Copy marked X)*

*ac.*  
 I am now to transmit to you  
 the accompanying copy of a letter from  
 the Magadi Soda Co. *(M. enclosed)* together with the  
 draft of a new Deed *to provide for* enclosed therewith

NP

*2 drafts*

(2)  
 and to inform you that The Secretary  
 of State approves the draft, now submitted  
 and I am therefore to request that  
 you will now take the necessary steps  
 for the execution of the *Deed*

I am etc. (Signed) H. T. ALLEN

63

- Mr. Priestman
- Mr. ~~Deakin~~ *W. J.*
- Mr. ~~...~~
- Mr. Parkinson
- Mr. Tomlinson
- Sir C. Bottomley
- Sir J. Shuckburgh
- Perm. U.S. of S.
- Parly. U.S. of S.
- Secretary of State

*Answered by N06H*

3 November 1932

Gentlemen,

*With reference*

~~has etc. to refer~~ to the letter

*3 (60)*

from this Dept. of the 27th of Oct,

regarding the extension and

modification of the provisions of the

supplemental Deed dated the 19th of

July 1932, executed with the

Soda Co., Ltd. Company.

**DRAFT.**  
CHECK AGENTS  
FOR THE COLONIES

*(60)*

*(Serial 1-61)*

*(Copy marked X)*

*copy to W.O. (61)*

*2 drafts*

NP

I am now to transmit to you  
 the accompanying copy of a letter from  
 the Lagadi Soda Co., <sup>including</sup> together with the  
 draft of a new Deed enclosed therewith  
 to <sup>be used for</sup>

and to inform you that <sup>(2)</sup> The Secretary of State approves the draft, now submitted, and

I am therefore to request that you will now take the necessary steps

for the execution of the <sup>Deed</sup> ~~draft~~ Deed.

I am etc. (Signed) H. T. ALLEN

# The Magadi Soda Company Limited.

DIRECTORS:-

J.C. NICHOLSON (Chairman)  
P.F. FLETCHER  
W.Y. LUYERS  
H.F. MARRIOTT  
D. MARSH  
G.D. BAUNDERS

Imperial Chemical House,  
11, Abchurch Lane,  
London, E.C. 4.

OUR REFERENCE \_\_\_\_\_  
YOUR REFERENCE 18074/39.

RECEIVED  
28 OCT 1939  
G.L. OFFICE

London, S.W. 1

27th Oct 1939.

The Under Secretary of State,  
Colonial Office,  
London, S.W. 1.

P.C. 100/100

Sir,

No 58

Further to our letter of the 21st October we now  
enclose two copies of a draft of a new deed varying the terms  
of the principal Magadi leases as regards railway freight and  
royalty on despatches of soda from Lake Magadi during the  
period 1st November 1932/31st October 1940. You will notice  
that the new deed has been drawn on the lines of the agreement  
now in force, and we have marked any alterations in red.

Mr. H.F. Marriott has seen and approved the draft  
now submitted, and if you are also in agreement with it, will  
you kindly return the copy initialled by Mr. Marriott, when  
we shall be pleased to arrange for the engrossments to be  
prepared for signature.

We are, Sir,

Your obedient servants,  
FOR THE MAGADI SODA COMPANY LIMITED,

*J. Barlow*  
Assistant Secretary.

Copy (63)  
1/4 of copy to Mr. (63)  
copy to Mr. (63)

THIS DEED made the 15 day of 1932

BETWEEN THE CROWN AGENTS FOR THE COLONIES (hereinafter called "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 Imperial Chemical House Millbank 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 THIS DEED IS SUPPLEMENTAL to the following documents (1) a Lease (hereinafter called "the Magadi Lease") dated the 20th day of March 1928 made between the same parties as are parties hereto and in the same order whereby certain lands at Lake Magadi and Lake Natron in the Masai Province of the Kenya Colony and Protectorate were demised to the Lessees for a term of 99 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 Magadi soda deposits as therein defined (2) a Lease (hereinafter called "the Railway Lease") also dated the 20th day of March

1988 and made between the same parties as are parties hereto and in the same order but executed after the Magadi Lease whereby the railway commencing at Magadi Junction on the Kenya and Uganda Railway and thence passing to a terminus near Lako Magadi together with all lands which had been provided by the Government for the purpose of the construction and working of the said Railway were demised to the Lessees for a term of 99 years from the 1st day of November 1984 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 (3) a Lease (hereinafter called "the Port Lease") dated the 30th day of March 1988 and made between the same parties as are parties hereto and in the same order but executed after the Railway Lease whereby 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 and the Conveyor plant and apparatus used in connection therewith and the Pier adjacent thereto were demised to the Lessees for a term of 99 years from the 1st day of November 1984 subject to the payment of the rent thereby reserved and the covenants on the part of the Lessees and conditions therein contained and (4) a Deed (hereinafter called "the Deed of Variation") dated the 18th day of July 1988 and made between the same parties hereto and in the same order whereby certain modifications and variations

In the covenants contained in the Magadi Lease and the Railway Lease were agreed upon between the parties and were to have effect from the 1st day of November 1931 until the 31st day of October 1932,

A N D WHEREAS the Government and the Lessees are desirous of making for the period hereinafter mentioned such modifications and variations in the covenants contained in the Magadi Lease and the Railway Lease as are hereinafter expressed

H O W the Crown Agents acting for and on behalf of the Government and the Lessees hereby ~~consent~~ and agree and IT IS HEREBY DECLARED as follows:-

1. The provisions herein contained shall come into force on or from the 1st day of November 1932 (as from which date the provisions of the Lease of Variation shall cease to have effect) and shall remain in force until the 31st day of October 1934. As from the latter date the provisions herein contained shall cease to have effect unless before such latter date the Crown Agents and the Lessees agree either by supplemental deed or memorandum endorsed hereon or by letters exchanged between the parties that the period of the operation of such provisions shall be extended for some further period.
2. The royalties payable under the Magadi Lease shall be deemed to be at the rate of sh. 1.50 in respect of every ton of raw soda, and in respect of every ton of soda, soda products or soda

contained in manufactured soda (as in the Magadi Lease defined) transported from Lake Magadi (whatever the aggregate tonnage may be) and sub-clauses (i) (ii) and (iii) of Clause 4 of the Magadi Lease shall cease to have effect.

3. The Lessees shall on or before the 31st day of December in the years <sup>3</sup>1953 and <sup>4</sup>1954 pay to the Government or as the Government shall direct royalties at the rate aforesaid on all such goods so transported in the twelve months ended on the preceding 31st October and such royalties shall in the Magadi Lease be deemed to be the royalties therein referred to as thereby reserved.

4. Except for the proviso in the last paragraph of Clause 5(v) of the Magadi Lease the provisions of Clause 5(v) of the Magadi Lease shall cease to have effect and the reference in that proviso to a royalty shall be deemed a reference only to such royalty as is payable under the provisions of this deed.

5. Except for the proviso in the last paragraph of Clause 4 (iv) of the Railway Lease the provisions of Clause 4 (iv) of the Railway Lease shall cease to have effect and the reference in that proviso to freight shall be deemed a reference only to such freight as is payable under the provisions of this deed.

6. Clauses 10 and 12 of the Railway Lease shall cease to have effect and in substitution for the provisions therein contained the following provision shall have effect, namely:-

The rate of freight chargeable on such goods (as in the railway

lease defined) consigned by the Lessees direct from Lake  
 Magadi or any other point on the Railway to the Magadi Pier and  
 Depot Works at Kilindini by the Railway to Magadi Junction and  
 thence over the Kenya and Uganda Railway shall be Sh. 18.50  
 per ton on the actual tonnage consigned. Provided Always that if  
 the aggregate amount payable by the Lessees in respect of soda  
 goods so consigned to Kilindini and in respect of any soda goods  
 (including common salt) consigned outwards from Lake Magadi to  
 any other destination (for which the Lessees shall pay the scale  
 charge from time to time in force on the Kenya and Uganda  
 Railway as provided by Clause 11 of the Railway Lease) shall  
 amount to less than £57,000 in the period of twentyfour months  
 covered by this agreement the Lessees shall make good the  
 High Commissioner for Transport the difference between the ag-  
 gregate amount payable by the Lessees on goods actually consigned  
 and the fixed sum of £57,000. For the purpose of securing the  
 said minimum payment of £57,000, the Lessees shall pay to the  
 High Commissioner for Transport the sum of £1,541. 18. 4. at  
 the end of each calendar month, or such greater sum as shall be  
 due, having regard to the tonnage rate above provided, in respect  
 of consignments made from Lake Magadi during the month in question  
 provided always that if the amount payable in any month in  
 respect of soda goods (including common salt) so consigned shall  
 amount to more than £1,541. 18. 6. no payment in excess of the



said fixed sum shall be made to the High Commissioner for Transport until credit has been given to the Lessees for the amount by which the fixed payments in previous months have exceeded the amounts payable in such months by virtue solely of the tonnage consigned from Lake Nagadi in such months.

7. The sum payable for freight as hereinbefore provided shall in the Railway Lease be deemed to be the charges therein referred to as the charges for freight therein specified.

8. The Nagadi Lease and the Railway Lease and the covenants, conditions and provisions therein respectively contained shall during the existence of the agreement hereby made operate and have effect as if the modifications and variations hereby made ~~and~~ respectively had been ~~made~~ in the Lease of which the provisions have ~~been~~ hereby modified and varied but otherwise and in all other respects the Nagadi Lease the Railway Lease and the Port Lease shall remain in full force and unaffected by any provision herein contained.

9. The provision for arbitration contained in Clause 14 of the Nagadi Lease and Clause 30 of the Railway Lease shall apply to this deed as if the provisions herein contained were contained in the Lease of which the provisions are hereby varied and as if the construction meaning or effect of this deed came for all purposes within those Clauses.

10. The costs of the preparation execution and stamping of this

deed (including the cost of stamping the same and effecting entries relating thereto in the Registry of Titles for the Colony of Kenya if the Lessees shall decide so to do) shall be borne by the Lessees.

I N W I T N E S S whereof one of the Crown Agents has hereunto set his hand and seal and the Lessees have caused their Common Seal to be <sup>hereunto</sup> affixed the day and year first above written.

SIGNED SEALED AND DELIVERED by  
one of the Crown Agents for the Colonies  
in the presence of:

THE COMMON SEAL of The Nagadi Soda Company  
Limited was hereunto affixed in the  
presence of:

Director.  
Secretary.

2258

TELEPHONE: VICTORIA 4444.  
TELEGRAMS: SODAGADI, LONDON.

WORKS { MAGADI, KENYA COLONY  
KILINDINI

# The Magadi Soda Company Limited.

DIRECTORS:-

- J. G. NICHOLSON (Managing Chairman)
- F. F. FLETCHER
- W. F. LUTYENS
- H. F. MARRIOTT
- G. WARR
- C. G. SAUNDERS

Imperial Chemical House  
Millbank.

OUR REFERENCE  
YOUR REFERENCE 18074/32 ✓

London, S.W.1.

21st October 1932.

The Under Secretary of State  
Colonial Office,  
London, S.W.1.

RECEIVED  
22 OCT 1932  
COLONIAL OFFICE

~~ACKNOWLEDGED~~

P.C.

Sir,

I have for acknowledgment your communication of the 17th October, and am instructed to inform you that my Directors are pleased to note that the Secretary of State for the Colonies and the Governor of Kenya are prepared to accept the proposal contained in our letter of the 29th September, regarding the extension, with one modification, of the provisions of the Supplemental Deed dated 18th July 1932.

Our legal advisers have been asked to prepare a new deed incorporating the terms of the agreement, and I hope to submit this to you in draft for your approval in the course of the next few days.

I am, Sir,

Your obedient servant,  
FOR THE MAGADI SODA COMPANY, LIMITED.

*Alb. Smith*

Secretary.

No. 16-20-Conf All 27 OCT 1932  
219, 216, 27-10-32

C. O.

235/6

Mr. Brewster 15/10  
Mr. Allen 15/10  
Mr. Tomlinson.

18074/32

to Dr

Sir C. Bottomley.  
Sir J. Shackburgh.  
Sir G. Grindle.  
Form. U.S. of S.  
Part. U.S. of S.  
Secretary of State.

Kenya

Approved by No 58061

C.D.  
R 17 OCT  
D 17

17 OCT

DRAFT. contn.

S

The Secy.

Magati Soda Co

With ref to the letter  
from this Office of the 24 Oct.

Copy C.O. 1316 - 15/10/32  
Copy to Hon. Compt. R/127 OCT 1932

I am in the state for the  
info of the Magati Soda  
Co Ltd that having  
secured the concurrence of the  
Gov. of Kenya, he is prepared to  
the proposals submitted in  
your letter of the 29<sup>th</sup> Sept.  
for extending, with one  
modification, the provisions  
of the Supplemental Deed  
dated July 18<sup>th</sup> 1932.

Copy with copy 51.  
L.A. L.F.

2. The S of S will

await your suggestions as to the  
steps to be taken in order to  
give legal effect to the  
~~modified by~~ ~~modification~~  
~~in the Agreement~~ understanding  
implied in this correspondence.

(Signed) H. T. ALLEN.

about your suggestions as to the  
steps to be taken in order to  
give legal effect to the  
~~Agreement~~ <sup>modification</sup>  
in the Agreement - understanding  
implied in this correspondence

(Signed) H. T. ALLEN

18971/30

54 24

C. O.

Mr. Freeston. 30/9

Mr. Allen 30/9

Mr.

Mr. Parkinson

Mr. Tomlinson

Sir C. Bottomley. 30-9.

Sir J. Shuckburgh.

Permt. U.S. of S. 30th Sept

Parly. U.S. of S. 30.9.22

Secretary of State.

DOWNING STREET,

9 OCT  
September, 1922.

Sir,

I am, etc., to acknowledge the

receipt of your letter of the 28th

September regarding the terms of

renewal of the supplemental deed bearing

the terms of the Maradi lease and to state

for the information of your Board that the

text of their proposals is being

communicated to the Governor of Kenya

by the airmail leaving this country on

October 5th. Sir Joseph Byrne is

being asked to furnish the Secretary of

State with his views by telegraph. A

further communication will be addressed to

you on receipt of his reply.

I am, etc.,

(Signed) H. T. ALLEN.

**DRAFT** Cas. & P. minutes

THE SECRETARY,

MESSRS. THE MAGADI SODA CO. LTD

30th

18974/35

24  
54

C. O. 2

Mr. Preston. 20/9

Mr. Allen 30/9

Mr.

Mr. Parkinson

Mr. Tomlinson

Sir T. Bottomley. 30.9.

Sir J. Shuckburgh.

Permt. U.S. of S. 30.9.32

Parly. U.S. of S. 30.9.32

Secretary of State.

DOWNING STREET,

8 OCT  
September, 1932.

Sir,

I am, etc., to acknowledge the

receipt of your letter of the 20th

September regarding the terms of

renewal of the supplemental deed bearing

the terms of the Magadi leases, and to state

for the information of your Board that the

text of their proposals is being

communicated to the Governor of Kenya

by the airmail leaving this country on

October 5th. Sir Joseph Byrne is

being asked to furnish the Secretary of

State with his views by telegraph: no

further communication will be addressed to

you on receipt of his reply.

I am, etc.,

(Signed) H. T. ALLEN

**DRAFT** *Copy to minutes*

THE SECRETARY

MESSRS. THE MAGADI SODA CO. LTD.

3 dft.



C. O.

C.D.  
R-1-OCT  
D. 3

Mr. Preston 20 S.O. for Sir G. Bottomley's sig.

Mr. Allen 30/9

Mr.

DOWNING STREET,

Mr. Parkinso

SECRET

8 001

Mr. Tomlinson

*2/2*

Mr. Sir G. Bottomley 30.1

Sir J. Shackburgh

My dear Byrne,

Permt. U.S. of S.

Party, U.S. of S. 30.2.32

Secretary of State

The enclosure to this letter is even more confidential than the official letter from Harriott which accompanies the secretary of state's despatch of today; in fact I ask you to confine its perusal to Moore and Rhodes. Any leakage of the contents would seriously embarrass us with the Company and would prejudice Harriott's relations with the Board.

**DRAFT.** Cuo. v. Harriott

BRIGADIER GENERAL

SIR JOSEPH BYRNE, K.C.M.G.,  
K.B.E., C.B.

Fr. Mr. Harriott 28th Sep  
No. 50.

The position is indeed serious and most disappointing. I am afraid it is not another case of Mrs. Partington with the best of intentions, inability to resist the tide of the world depression.

My opinion is that we must try to keep things as quiet as possible until things will improve before it is of advantage. If things do mend, it is just the sort of winding up we want. Yours sincerely

(Signed) W. C. BOTTOMLEY

16074/32

C. O.

AIRMAIL OF 5th OCTOBER.

52 26

Mr. Freeston 30

Mr. ~~Allen~~ 30/9

Mr.

Mr. Parkinson

Mr. Tomlinson

Sir C. Bottomley

Sir J. Shuckburgh

Permd. U.S. of S. 30/9/52

Parly. U.S. of S. 30/9/52

Secretary of State.

Recd 55

DOWNING STREET,

3 October  
Secretary,

Sir,

Sgt

I have, etc., to inform you with

regret that the financial prospects of the  
Magadi Soda Company have substantially  
deteriorated since the date of

47 confidential telegram No. 18 of the  
14th September which was addressed to you  
in reply to your confidential despatch  
45 No. 106 of the 18th August.

The position is succinctly  
49 explained in the letter of which copies  
accompany this despatch from the  
Government Director on the Board of the  
Company. You will observe that  
owing to causes beyond its control the  
Company is faced during the forthcoming  
year with a reduction of at least  
50 per cent in the quantity of soda  
for which it can find a market.

**DRAFT.** Cons. v. minutes

KENYA

CONFIDENTIAL

Gov.

Fr. Marriot 27th Sept.  
No. 3

Fr. Magadi Soda Co. 29th Sept.  
No. 51.

3/16

3. From the Company's letter of 51

the 9th September (of which copies

are also enclosed) you will note

that they propose such a relaxation

of the terms of the present

temporary agreement as will per-

mit their spreading over two

years the minimum payment due on account

of ~~the~~ <sup>in 40,000 £m</sup> interest charges. You will not over-

look the fact that ~~the~~ specified amount

is based on a minimum tonnage; any

increase over that minimum will result

in proportionately increased payments

to the ~~same~~ <sup>same</sup> ~~Board~~ <sup>Board</sup>

under the ~~Board~~ <sup>Board</sup> ~~agreement~~ <sup>agreement</sup>

of 1944 which provides that

the payments shall be varied "to

the extent economic capacity" remains

unimpaired, and the presence of the

Government Director on the Board affords

in my judgment, an adequate guarantee

that a deviation from this require-

ment would not justly be practised.

3- From the Company's letter of 51

the 19th September (of which copies are also enclosed) you will note

that they note such a relaxation of the terms of the present

temporary agreement as will permit

it at their spreading over two

years the minimum payment due on account

of ~~the~~ <sup>on 40,000 km</sup> charges. You will not over-

look ~~the~~ the specified amount

is based on a minimum tonnage; any

excess over that minimum will result

in proportionately increased payments

to the Kenya Transport Authority

under the Nairobi Soda Company's

contract of 1954 which provides that

the amount shall be adjusted to

the economic capacity remains

uninterrupted, and the presence of the

Government Director on the board affords

in my judgment, an adequate guarantee

that a deviation from this require-

ment would not pass unnoticed.

4. After careful consideration  
of Mr. Marriott's letter you will no  
doubt recognise that there <sup>is</sup> no  
preferable alternative to acceptance  
of the Company's proposals. I should  
be glad if you would notify me of your  
views by telegraph as soon as con-  
venient possible after receipt of  
this despatch.

(Sd) P. OUNIFFE-LISTER.



4. After careful consideration of Mr. Marriott's letter you will no doubt recognise that there is <sup>no</sup> no preferable alternative to acceptance of the Company's proposals. I should be glad if you would notify me of your views by telegraph as soon as conveniently possible after receipt of this despatch.

J. P. CONLIFFE-LISTER

15565/22  
 Copy in [unclear]

1. The Magadi Soda Company operates in Kenya under three leases dated 1st November, 1924 from the Kenya Government. Its ordinary shares are held by Imperial Chemical Industries; out there is an independent body of debenture-holders. The Company extracts from Lake Magadi natural deposits of sodium carbonate and ships it from Tilindini to various markets. The soda is, however, not pure and cannot compete on equal terms with the synthetic product manufactured in Cheshire by Imperial Chemical Industries, in Japan, and elsewhere.

2. The Company pays a royalty to the Kenya Government on every ton extracted and an agreed freight charge to the Kenya-Uganda Railway for every ton moved. Under the leases of 1924 the Company contracted to ship by rail a minimum of 100,000 tons per annum up to the 30th October, 1931 and 100,000 annually from the 1st November, 1932.

3. About the middle of last year it became apparent that the combined effects of the world depression and the competition of the synthetic product would prevent the Company from disposing profitably of the 100,000 tons which it was required to ship during the ensuing year. As a result of protracted negotiations, the Kenya Government, on the advice of the Colonial Office and of the Government Director on the Board of the Magadi Soda Company, finally accepted a new Agreement whereby the Company undertook to pay to the Railway freight charges on the amount actually despatched subject to a minimum of 40,000 tons. The Agreement was limited in scope to the year 1st November, 1931, to 31st October, 1932.

(Signed [unclear])

but

but provision was made for it to be extended for a further period by consent of both parties.

4. The question of renewing the agreement was taken up by the Governor in August in a despatch urging various modifications in the interests of the Railway. After consultation with the Government Director it was decided to enter the Company but any endeavour to modify the agreement would not invite attempts by the Company to secure revision on terms more favourable to themselves. Mr. Leach Byrne thereupon agreed to a renewal of the existing Deed.

5. Meanwhile, however, it was reported here by Mr. Marriott (the Government Director) that at a Board Meeting held on September 2nd a position was disclosed which made the future prospects of the Company more doubtful. The case is fully set out in Mr. Marriott's official letter of September 2nd (49 on file) and a secret letter of the same date to Sir [redacted] Stanley (No. 50) gives further and even more confidential particulars.

6. It was arranged that Mr. Marriott should use his influence with the Company to move them to apply forcibly for a renewal of the Agreement for two years on a minimum basis of 20,000 <sup>two</sup> per annum. (The object of the Colonial Office in suggesting a two-year period was to fortify the claim of the Kenya Government, as against the debenture holders, to the Company's remaining assets in the not unlikely event of its going into liquidation before November, 1931). This proposal is now made by the Company's official letter of the 29th September (No. 51).

7. The evidence in these three letters (Nos. 49,



50, 51) is enough to show that any attempt to hold the Company to the previous minimum of 40,000 tons could only accelerate the collapse of its activities in East Africa. It should be noted that

(a) the 20,000 ton clause is a minimum only. If more is actually shipped, proportionately greater charges will be paid to the Railway, and

(b) under certain clauses of the 1947 lease which remain in force, the Railway is bound to hold the deposits "to the best advantage of the Company". Mr. Harriott's presence on the Board is sufficient to guarantee that this stipulation has not been overlooked.

8. The Government of Kenya has for some years regarded the Company with a scarcely veiled hostility and antagonism by neglecting to supply the facilities which have been strenuously requested. The local Government, knowing the concentration of land with several agricultural industries, possibly regards the latter as a milk-cow of unlimited capacity which only has to be squeezed.

As a matter of fact the confidential relations between I.C.I. and Kenya are such that the former has lent and continues to lend money by supporting Harriott; the principal motive for continuing this support being the need for providing an auxiliary source of supply in the event of any disturbances attending I.C.I.'s African production.

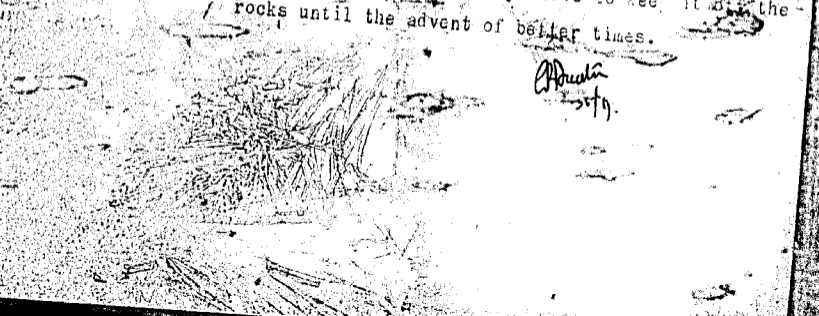
9. The local Government is not well placed to claim to be the best judge of the position; and it is submitted that in the ultimate interests of Kenya Railway, Sir Joseph Byrne (in his capacity of Governor and High Commissioner) should be strongly

pressed

pressed to to accept the arrangement now proposed  
by the Company, on the grounds that ~~it~~ will at least  
secure to Kenya a substantial proportion of the  
cargo if the Company should suffer early shipwreck,  
and that by lessening the immediate strain on the  
Company's <sup>financial</sup> resources it may serve to keep it off the  
rocks until the advent of better times.

*Adrian  
Sofy.*

*Sep. 4, 49.*



TELEGRAMS: VICTORIA 4444.  
TELEPHONE: 602-603, LONDON.

WORKS: MAGADI, KENYA COLONY.  
KILINDINI

31  
32

# The Magadi Soda Company Limited

- DIRECTORS:
- ✓ A. RICHMOND
  - ✓ J. P. FLETCHER
  - ✓ W. LUTHER
  - ✓ F. MARRIOTT
  - ✓ D. MARR
  - ✓ C. BAUGHMAN

Imperial Chemical House  
Millbank  
London S.W.1

RECEIVED  
7 SEP 1932  
OFFICE

29th September 1932.

The Under Secretary of State,  
Colonial Office,  
London, S.W.1.

Sir,

I am instructed by my Directors to refer you to the Supplemental Deed dated 18th July 1932 varying the terms of the Magadi main leases, and to put forward for your consideration, and that of the Governor of Kenya, our proposals for an extended modification of the principal leases in accordance with the provisions of Clause I of that Deed.

As regards the lease year ending October next 1932, it is anticipated that despatches of soda ash from Lake Magadi will exceed 40,000 tons, upon which the minimum rental has been calculated.

As regards the lease year commencing on November next, however, we have to notify you that being primarily on the probable exclusion of Magadi soda ash from the Japanese market owing to local production having increased to an extent

17/9/32  
 18.10.32  
 18.10.32

The Under Secretary of State,  
Colonial Office.

29th September 1932.

which more than meets local requirements, the despatches during next year will fall short of the 40,000 tons minimum laid down in the Supplemental Deed; in fact our present calculations indicate that the Company cannot expect to sell more than 15,000/20,000 tons per annum unless some vital change in market conditions takes place.

In these circumstances my Directors wish to suggest that the Supplemental Deed shall be renewed for two years in its entirety with the important exception that the minimum freight charge on soda goods of £37,000 shall be spread over the next two lease years instead of only over one year as at present.

In putting forward this proposal my Directors have in mind the desirability of protecting the Company against a severe penalty for short despatches, and the suggested figure is based upon an estimate of what the Company can actually perform so far as can be judged under existing conditions. It should be made clear, however, that the proposed spread-over is regarded as a minimum and that every endeavour will continue to be made to increase the quantities despatched up to the maximum economic capacity during the two years in question.

I am, Sir,

Your obedient servant,  
For THE MAGADI SODA COMPANY, LIMITED.

*[Signature]*  
Secretary.

High F. Marriott M. Inst. M. E. (Past Pres.) M. Inst. C. E. A. R. S. M. A. R. C. S. E.  
Consulting Engineer

34 50  
C2

TELEPHONE WHITEHALL 9521-2.

14, WATERLOO PLACE,  
LONDON, S.W.1.

Secret  
CONFIDENTIAL

28th September 1932

Sir Cecil Bottomley, K.C.M.G., C.B.,  
Colonial Office,  
Downing Street,  
S. W. 1.

My dear Bottomley

I send you herewith my official letter on the present position of the Magadi Company as I explained it to you on Monday, 26th September.

There are one or two further points I will add on your personal information, but these are business secrets which are only given to me in the strictest confidence to enable me to realise the general situation, and I can therefore not include them in a document which is not confined within the closest circle.

Japan has injured Magadi most by subsidising factories in her own country, but I.C.I. has fought Magadi's battle over a long period in Japan by selling their own product at lower and lower rates and thus keeping the import market open for Magadi.

Copy to Mr. D. Byrnes. 23.10.52

Now that the position has been reached in which Japan is exporting soda, it is found that the price of imported soda ash has been lowered to such an extent that Japanese merchants can actually buy I.C.I. soda and Magadi soda at the ruling rates in Japan, ship it in their own steamers to India at present rates and under-sell the I.C.I. and Magadi products in India.

This state of affairs of course cannot be allowed to continue and the Japanese rates will have to increase to prevent dealings of this description. This will mean that the chances of continuing sales of Magadi soda in Japan will be necessarily still more meagre than they are at present.

The Japanese position is very involved and I doubt if any reliable forecast can be made by anyone, but as the Magadi position there cannot well be worse than at present, any change in the situation should be the better for the Company.

Another point that should be noted in considering the position of I.C.I. in this Magadi problem.

It is that the I.C.I. can sell Crescent Ash, that is the Washington product, in all markets in the world, wherever they may be, at a lower rate than can be quoted without loss by Magadi, and still make a profit.

I.C.I.'s efforts, therefore, to hold to the ~~Magadi~~ contract and produce and sell the greatest amount possible is the more to be appreciated.

Africa, the home of Magadi, is the only place where Magadi has real advantage and here the opening up of any large soda consuming industry, such as paper pulp factory, would put a different complexion on the situation.

*Yours sincerely  
W.D. Morrison*

*Later*

*News is just looking that  
Johnson is under selling I.C.I. & Magadi  
in Australia.  
W.D.M.*

*Hugh F. Marriott*  
Consulting Engineer

49<sup>51</sup>

TELEPHONE WHITEHALL 9521-2.

14, WATERLOO PLACE,  
LONDON, S.W. 1.

Confidential

27th September 1932

The Under-Secretary of State,  
Colonial Office,  
Downing Street,  
S. W. 1.

30

Sir,

Magadi Soda Company

The present Lease you holds on 31st October and this is also the termination of the recent arrangements entered upon between the Government and the Magadi Soda Company, whereby the Company undertakes to pay to the Railway a minimum sum of £3083 monthly, this amount being the average monthly cost of soda transport from Magadi on an output of 40,000 tons a year.

It has therefore become necessary to consider the position of the Company for the ensuing year with a view to seeing what can be done in production and sale of soda to meet the requirements of the Lease and the present modifying agreement, and to take stock of the Company's financial position and to ascertain how far

Copy of Report. 3 Oct 1932



the remaining financial resources will enable continuance of the Company's operations throughout the prevailing period of commercial depression.

Japan always has been and so far still is the key to the success of operations at Magadi.

Imports of soda into Japan have been steadily decreasing over a considerable period owing to the policy which has been adopted in that country of building factories to supply eventually the whole of their own soda requirements. That position has now been reached and Japan can not only manufacture sufficient for the whole of her internal consumption, but also a surplus for export. In the prosecution of this programme Magnesia has been the chief sufferer, but it has also been possible to sell Magadi soda in Japan though in continually reduced amounts as the local factories have come into operation...

Recently sales of Magadi soda in Japan have been made still more difficult on account of the rate of exchange of the yen which has fallen from 2/- about a year ago to a recent quotation of 1/4. The Magadi Company loses the difference.

Further obstacles have been placed in the way of Japanese business by the raising about June last

of the import dues on soda by 50%, by which the amount payable was raised from 6/- to 9/- a ton of soda imported. The last shipment to Japan under the present conditions had to be sold at a loss in order to dispose of the consignment.

You will thus realise that it is impossible for the Company to make any estimate with any degree of security of the tonnage of soda to be supplied to Japan markets during the next twelve months.

The remaining markets in the East have been still further reduced in their capacity to take soda. The outlook for these remaining Eastern markets and including Australia, Africa and South America, thus comprising the whole of the markets open to the Soda Company, is that 15,000 tons of soda will be sold in all these markets during the next twelve months with a possibility of increase to a total of 20,000 tons if certain negotiations for contracts have a favourable outcome.

This amount therefore of 20,000 tons is the maximum that the Company can count on disposing of with any degree of security during the ensuing year.

Now as to the financial position. The total resources of the Company remaining available, including

the remaining uncalled capital, is about.....£279,000.

On the basis of 15,000 tons sold and including penalties to the Railway for tonnage short of 40,000 tons, the cash position would be reduced by October 1933 to.....£35,000 and the remaining cash would disappear altogether during the first half of 1934.

With these conditions in view it is doubtful whether the Company would even be justified in carrying on operations at all into next year and the Debenture holders who are fully informed as to the position might quite conceivably step in and take <sup>claim</sup> that cash remained in preference to seeing it dissipated in certain loss operations.

On the other hand, if the output of 20,000 tons is realised next year, and it will have a much better chance of doing so if the Company is relieved of the prospect of having to close down, and this limit is allowed by the Government in lieu of the present limit of 40,000 tons, the Company will be in a much better position to continue its sales in the various markets and it is estimated that the £279,000 remaining in the coffers of the Company will enable work on this restricted scale to be carried on for the next four or five years and so give

the Company a fair chance of tiding over the present industrial depression.

This restriction of output would of course be carried out by intermittent working at the Lake and with the large storage available no doubt agreement could be come to locally between the General Manager of the Company and the Railway authorities as to the best means of arranging the transport so that the greatest economy was obtained on both sides.

The consumption of soda throughout the world will again inevitably increase and it is quite probable that the problem of rendering Magadi Soda a cleaner product will in due course be solved, or new markets will open up within its sphere of sales for which this lower grade material will be suitable, but the opportunity to take advantage of either or both of these eventualities will be lost unless it can be arranged that the Company shall keep the works at the Lake in operation, if only in nucleus form, as to be ready to expand again when called upon.

To meet these two compelling conditions, therefore, the limitation of present soda markets and the definite limits of the remaining cash capital, it is reasonable that the Company should be relieved of the liability to pay a penalty for not attaining the minimum tonnage, if it cannot dispose of it; or if the reasons for adhering to a

definite minimum on the Government side are urgent, that this minimum should not be fixed at a higher rate than 20,000 tons annually under the present conditions.

In order to safeguard the income on this basis for as long a period as possible, I would suggest that the present agreement, by which the Railway receives £37,000 for the equivalent of 40,000 tons transported during twelve months, might be spread so as to guarantee the Railway an income of £37,000 over two years, to be paid in monthly instalments as at present, the remainder of the present agreement to stand as already arranged.

I have the honour to be

Your obedient servant,

*[Handwritten signature]*

REGISTRATION COPY -

43

48

Telegram from the Governor of Kenya to the Secretary of State for the Colonies.

Dated 24th Sept. Received 12-44 p.m. 24th Sept., 1932.

No.173 Confidential.

Your telegram of 14th September No.182

47

~~Confidential~~ Ugadi.

In the circumstances I agree present time inopportune to press for more favourable terms. As Governor and High Commissioner I agree to proposal as to renewal of present deed for a further period of 12 months.

O.D.  
R 14 EF  
D 16

18074/32 Kenya.

C. O.

Mr. Allen, 15/9/32.

*Adi Clarkell (Kenya)*

Mr.

Mr. Parkinson.

Mr. Tomlinson.

Sir C. Bottomley, 14.9.32 *ccad*

Sir J. Shackburgh.

Parlt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

*Added serial  
3.07.14/9/32*

*Ansrd 48*

*No 182*

Confidential.

Your Conf. despatch No.106.

(45)

**DRAFT.** TELEGRAM.

Conson. v minute.

GOVERNOR,

NAIROBI.

Considerations to which you refer were, of course, fully in mind when new Deed was entered into, and no less anxious than yourself that no opportunity should be lost for securing revision more favourable to Kenya. But after consultation with Govt. Director who fully shares your point of view and is fully alive to the necessity of upholding the interests of Government and Railway, I am satisfied that, especially having regard to doubtful ~~and~~ position which shows no improvement, any attempt to secure tonnage basis at present time would

not

not be in interest of either Govt. or Railway  
and would invite attempt by Co. to secure  
revision on terms more favourable to  
themselves. I understand that after  
meeting of Board on 22nd September, I  
shall receive request from ~~you~~ for renewal of  
present Deed for further period of 12 months,  
*both not in the letter*  
and I trust that you will acquiesce in my agreeing,  
in which case you may rest assured that your  
desire to secure an early ~~renewal~~ possible  
revision on lines suggested will be  
kept constantly in view.

Telegraph reply as soon as possible.



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and would invite attempt by Co. to secure  
revised terms more favourable to  
themselves. I understand that after  
meeting of Board on 22nd September, I  
shall receive request from Co. for renewal of  
present Deed for further period of 12 months,  
*both as to the & the*  
and trust that you will acquiesce in my agreeing,  
in which case you may rest assured that your  
desire to secure as early as possible  
revision on lines suggested will be  
kept constantly in view.  
Telegraph reply as soon as possible.

*Hugh F. Marrett, M. Inst. M.E. (Inst. P.M.E.) M. Inst. C.E. A.R.E.M. A.C.S. & C.*  
Consulting Engineer

TELEPHONE WHITEHALL 9821-2.

46  
45  
14, WATERLOO PLACE,  
LONDON, S.W.1.

9th September 1932

H. T. Allen, Esq.,  
Colonial Office,  
Downing Street,  
S. W. I.

My dear Allen

Now I have read the confidential despatch, Kenya 106,  
dated 18th August 1932, and would like to bring a few points  
to your notice in connection therewith, so that the position  
regarding the arrangements already made between the Government  
and the Magadi Soda Company and the prospects for the near  
future may be clearly realised.

Yes  
If you will kindly refer to my letter to Sir Cecil  
Bottomley, dated 27th April 1932, you will see the conditions  
existing when these negotiations were undertaken and the  
difficulties before us of getting any agreement with the  
Company which would bind them with a fair amount of respon-  
sibility and would ensure to the Kenya Government a certain  
income.

Despatch - Page 1, Clause A.

The first period was fixed to end on 31st October 1932  
as that date coincides with the Lease year and it was thought  
advisable to limit the renewals of the Agreement to periods

14/9/32  
Tel. to 14/9/32

*John F. Marrett*, M. Inst. C.E. (Part 1) M. Inst. C.E. (Part 2) M. Inst. C.E. (Part 3)  
Consulting Engineer

TELEPHONE WHITEHALL 9821-2

RECEIVED  
SEP 11 1932  
POST OFFICE

14, WATERLOO PLACE,  
LONDON, S.W.1.

9th September 1932

H. T. Allen, Esq.,  
Colonial Office,  
Downing Street,  
S. W. 1.

*My dear Allen*

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to your notice in connection therewith, so that the position  
regarding the arrangements already made between the Government  
and the Magadi Soda Company and the prospects for the near  
future may be clearly realised.

*14/9/32*  
*14/9/32*  
*14/9/32*  
If you will kindly refer to letter to Sir Cecil  
Bottomley, dated 4th July 1932, you will see the conditions  
existing when these negotiations were undertaken and the  
difficulties before us of getting any agreement with the  
Company which would bind them with a fair amount of respon-  
sibility and would ensure to the Kenya Government a certain  
income.

Despatch - Page 1, Clause A.

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advisable to limit the renewals of the Agreement to periods

46  
45

of twelve months each so that I can take advantage of any improvement in the trade of the Company to vary the terms to the advantage of the Government, if at any time the position appears to justify it.

Page 1, Clause B.

Common salt has always been an arguable point and this question would have come definitely into the foreground if the Company had been able to raise the capital and make the higher class product contemplated two or three years. In the treatment proposed, common salt would have been a considerable proportion of the output and would definitely have had to have been considered as Soda goods.

It is much better to let the Company know where they stand in considering common salt as soda goods as thereby all obstacles are removed to research which includes common salt as a production.

At the present time a small amount of research is being done to see if common salt can be recovered from the surface of the Lake. If this comes to anything it is not anticipated that it would mean more than the recovery of a few thousand tons annually, and it is much better to let the Company go in for any activities that will keep it as a going concern and increase the local trade and employment.

Page 1, Clause C.

Reference to my letter of April 4th will remind you that

KrB

the Company resolutely declined in the earlier stages of negotiations to be responsible for any minimum tonnage in view of the doubtful sales position, and the point was met by their agreeing to guarantee to the Railway a minimum cash payment. This really amounts to the same thing, but it avoids continually bringing into the ~~light~~ the fact that the tonnage specified cannot be marketed, and therefore should be open to continual recasting.

I much prefer, under present conditions, to keep the arrangement with the Company on a minimum cash basis and leave them free to do what they can wherever they can in the way of tonnage to meet the minimum payment and possibly increase it.

Page 1, Clause 2.

I think we have all been aware throughout that the Agreements that have been arrived at are a radical departure from the original terms of the ~~lease~~ and that these departures were absolutely necessary if the business were to be kept in existence. The terms of the lease stand good to be returned to as and when world conditions allow, and there is to my mind no point in standing out for set words and phrases if the patient dies meanwhile.

Page 2, Clause A.

The Company is extracting from the Lake and selling the maximum tonnage of Soda that can be disposed of and therefore any reference to the lease figures of tonnage are beside the

point. The point of minimum tonnage has been dealt with above.

I should here like to comment on a reference to negotiations during the past year with Colonel Pollitt. Colonel Pollitt is not a Director of Magadi Soda but of the I.C.I., and he can only indirectly take part in any negotiations between the Government and the Magadi Soda Company. The negotiations between the Government and the I.C.I. had already been terminated. I was at the time carrying through these very difficult negotiations direct with the Company in close touch with yourself and without intervention of the discussions with Colonel Pollitt in East Africa did not make the task easier.

Page 2. Clauses B-C-C.

I have indicated above that the minimum tonnage between Lake Magadi and the Coast was out of the question and the little additional inducement to allow shipments to other points of the railway turned the scale. I assisted in coming to the arrangements made. This, at the same time, was a favourable point for the Government as all shipments made at ordinary current rates to any other point apparently give an increased profit per ton-mile over the Magadi Kilindini Rate.

I do not therefore see any point in reopening a question that has proved useful to us in carrying through the negotiations.

I think I have commented as far as is necessary on all the points raised in this despatch, and would conclude by repeating what I have already indicated verbally, that the

Magadi Soda Company is definitely expecting that the Agreement as it now stands will be renewed for the next period of twelve months without alteration, and in my opinion any suggestion from the Government side to introduce alterations would be a highly dangerous proceeding, as it will give an opportunity to the Company to show that they have but meagre hope of marketing up to 40,000 tons next year, and they would probably return to their original position of requesting a suspension of any minimum tonnage whatever.

It cannot be too clearly realised that there is a definite amount of cash remaining available to keep this Company in existence and that after this money is expended no further funds will be forthcoming to support it.

Our main object therefore is to give the Company every reasonable chance to remain in existence as long as possible while waiting for amelioration of world conditions, and at the same time ensuring that the Government shall incur the least loss, while it insists to keep the Company alive and shall participate fairly when a stage is reached at which profits can be realised.

I would be glad if you would assure the Governor that I fully appreciate the points that have been raised from Kenya and the disappointments that the present restrictions of trade have occasioned, and he may rest assured that I am in continual and close touch with the whole of the work of

the Company and that no point is being missed to uphold the interests of the Government and the Railway.

I shall be glad to be in a position at the next Board Meeting on 22nd September to let the Chairman of the Company know that the agreement that is now in force will be continued for the next twelve months.

Yours sincerely  
R. D. Trevithick



45  
51

KENYA.

No. 106

CONFIDENTIAL.



GOVERNMENT HOUSE  
NAIROBI,  
KENYA

RECEIVED  
- 7 SEP 1932  
COLLECTOR

18<sup>th</sup> AUGUST, 1932.

Sir,

With reference to your Confidential despatch of the 30th June and to the draft Indentures between the Crown Agents for the Colonies and the Magadi Soda Company it is observed:-

- (a). The draft Indenture relates only to the twelve months ending the 31st October, 1932, unless it is subsequently decided to extend the period of its operation.
- (b). Common salt is specifically included in Clause 6 under the term "soda goods".
- (c). In Clause 6 provision is also made for the minimum guarantee to total railrage charges of £37,000 per annum on all outward soda goods from Magadi and not on a minimum annual tonnage of 40,000 tons.

2. With regard to the minimum guarantee of railrage charges of £37,000 per annum in Clause 6 the General Manager, Kenya and Uganda Railways and Harbours considers it to be a radical departure from the terms of the lease and desires this point to be recorded for revision in the event of the indenture being extended beyond the period of its currency.

Generally the position appears to be:-

(a)/

THE RIGHT HONOURABLE  
MAJOR SIR PHILIP CUNLIFFE-LISTER, P.C., G.B.E., M.C., M.P.,  
SECRETARY OF STATE FOR THE COLONIES,  
DOWNING STREET,  
LONDON S.W.1.

*Handwritten:* avoid Tel. copy. 14/9/32

*Handwritten:* No 37

(a) The minimum tonnages fixed in the Lease had regard to the capital incurred by these Services in providing rolling stock to move those tonnages. The only soda traffic then contemplated was between the Lake and the pier at Shimanzi. That traffic would be moved in train loads, involving no handling by the Administration - only haulage - an economical form of transport which justified the terms of the Lease. Both in the Lease itself and in the negotiations with Colonel Politt, as well as in the Company's letter to the Under Secretary of State of the 25th April, vide the enclosure of your Confidential (2) despatch of the 26th April, 1932, the basis of the Company's guarantee was a minimum tonnage from the Lake to the Coast. Actually, under the terms of the Lease, the Company should rail 100,000 tons to the Coast during the twelve months ending 31st October, 1932. Subsequently, it was agreed that, to meet the abnormal conditions now prevailing, the Transport Administration would for the current lease year be content with a guaranteed minimum tonnage of 40,000 tons only to the Coast.

(b) The draft Deed abandons that basis of a guaranteed minimum and substitutes a minimum railage of £37,000 to be made up wholly of bulk traffic to the Coast, or partly of ~~bulk~~ traffic and partly of small consignments of soda goods requiring handling and transhipment to ~~any~~ point served by these Railways provided that the aggregate railage charges paid at least equal £37,000 per annum.

(c) This is not regarded as an economical proposition for the railway and the General Manager considers it essential that the minimum tonnage to the Coast to be railed or paid for shall be not less than 40,000 tons, any other soda goods ~~being~~ forwarded to other stations being regarded as something additional and as some slight compensation for the temporary relief afforded to the Company by reducing their liability to rail 100,000 tons to 40,000 tons per annum.

In the circumstances I should be glad if the Crown Agents might be advised that in any negotiations for the extension of the period of the deed the desirability of basing the minimum guarantee upon a tonnage basis should be strongly advocated and be not waived without reference.

In connection with the mention in Clause 6 of Common Salt as a soda product, and the reference to

Sir/

No 18  
55/5/29

Sir Jacob Barth's telegram No. 150 of the 26th May, 1929, it appears that the Magadi Company will be competing in the same market as the existing salt concessionaires and that they are more favourably situated for the up-country market in agricultural salt. It may, therefore, be necessary to consider any representations the Kenya Salt Company may make for a reduction in royalties.

I have the honour to be,

Sir,

Your most obedient, humble servant,

*W. W. W. W.*

GOVERNOR'S DEPUTY.



4  
54

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

O/Kenya 31a

TELEGRAMS: "CROWN, LONDON."

TELEPHONE: 7750 VICTORIA.

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

25th August, 1932.

Sir,

With reference to your letter No. 18074/32 of the  
24th June, I have the honour to state that the Deed  
varying the covenants of the leases held in Kenya by  
the Magadi Soda Co., Ltd., has been executed by us with  
the Company, and to forward six copies herewith for the  
use of the Colonial Office and the Colonial Government.

The original is being retained in this office.

I have the honour to be,

Sir,

Your obedient servant,

*J. L. Stewart*  
for CROWN AGENTS.

The Under Secretary of State,  
Colonial Office.

29 AUG 1932

copy of 1500  
to Hon. Secy (2)

6

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JC

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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 312

TELEGRAMS: "CROWN, LONDON."  
TELEPHONE: 7700 VICTORIA.

RECEIVED  
16 AUG 1932  
COL OFFICE

25th August, 1932.

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The original is being retained in this office.

I have the honour to be,

Sir,

Your obedient servant,

*J. J. [Signature]*  
for CROWN AGENTS.

The Under Secretary of State,  
Colonial Office.

29 AUG 1932  
copy of [unclear] made  
[unclear] (2)

36

6

JC

42  
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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: 7748 VICTORIA.

RECEIVED  
20 AUGUST  
COL. OFFICE

25th August, 1932.

Sir,

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24th June, I have the honour to state that the Deed  
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The original is being retained in this office.

I have the honour to be,

Sir,

Your obedient servant,

*J. Leonard*  
FOR CROWN AGENTS.

The Under Secretary of State,  
Colonial Office.

36

6

copy of 13th March } All 29 Aug 1932  
Crown Agents (G.)

JO

Sutton Cammery & Oliver,  
7/8, Great Winchester Street,  
London, E.C.2.



made the Eighteenth day of July  
One thousand nine hundred and  
thirty two B E T W E E N

Stamp 10/-

THE CROWN AGENTS FOR THE COLONIES (hereinafter called 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 law of England under the Companies Acts 1908 to 1917 and having their registered office situate at Imperial Chemical House, Millbank, 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

W H E R E A S THIS DEED IS SUPPLEMENTAL to the following documents (1) a Lease (hereinafter called the Magadi Lease) dated the Twentieth day of March One thousand nine hundred and twenty eight made between the same parties as are parties hereto and in the same order whereby certain lands at Lake Magadi and Lake Natron in the Masai Province of the Kenya Colony and Protectorate were demised to the Lessees for a term of Ninety nine years from the First day of November One thousand nine hundred and twenty four 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 Magadi Soda deposits as therein defined (2) a Lease (hereinafter called the Railway Lease) also dated the Twentieth day of March One thousand nine hundred and twenty eight and made between the same parties as are parties hereto and in the same order but executed after the Magadi Lease whereby 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 had been provided by the Government for the purpose of the construction and working of the said Railway were demised to the Lessees for a term of Ninety nine years from the first day of November One thousand nine hundred and twenty four 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 and (3) a Lease (hereinafter called the Port Lease) also dated the Twentieth day of March One thousand nine hundred and twenty eight and made between the same parties as are parties hereto and in the same order but executed after the Railway Lease whereby the Depot Works at Shimani 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 and the Conveyor plant and apparatus used in connection therewith and the Pier adjacent thereto were demised to the Lessees for a term of Ninety nine years from the First day of November One thousand nine hundred and twenty four subject to the payment of the rent thereby reserved and the covenants on the part of the Lessees and conditions therein contained.

AND WHEREAS the Government and the Lessees are desirous of making for the period hereinafter mentioned such modifications and variations in the covenants contained in the Magadi Lease and the Railway Lease as are hereinafter expressed

NOW the Crown Agents acting for and on behalf of the Government and the Lessees hereby mutually covenant and agree and IT IS HEREBY DECLARED as follows:-

1. THE provisions herein contained shall be deemed to have come into force as an aid from the first day of November One thousand nine hundred and thirty one and shall remain in force until the thirty first day of October One thousand nine hundred and thirty two. As from the latter date the provisions herein contained shall cease to have effect unless before such latter date the Crown Agents and the Lessees agree either by supplemental deed or memorandum endorsed hereon or by letters exchanged between the parties that the period of the operation of such provisions shall be extended for some further period.
2. THE royalties payable under the Magadi Lease shall be deemed to be at the rate of sh.1.50 in respect of every ton of raw soda, and in respect of every ton of soda, soda products or soda contained in manufactured soda (as in the Magadi Lease defined) transported from Lake Magadi (whatever the aggregate tonnage may

be) and sub clauses (i) (ii) and (iii) of Clause 4 of the Magadi Lease shall cease to have effect.

3. THE Lessees shall on or before the Thirty first day of December One thousand nine hundred and thirty two pay to the Government or as the Government shall direct royalties at the rate aforesaid on all such goods so transported and such royalties shall in the Magadi Lease be deemed to be the royalties therein referred to as thereby reserved.
4. EXCEPT for the proviso in the last paragraph of Clause 5 (v) of the Magadi Lease the provisions of Clause 5 (v) of the Magadi Lease shall cease to have effect and the reference in that proviso to a royalty shall be deemed a reference only to such royalty as is payable under the provisions of this Deed.
5. EXCEPT for the proviso in the last paragraph of Clause 4 (iv) of the Railway Lease the provisions of Clause 4 (iv) of the Railway Lease shall cease to have effect and the reference in that proviso to freight shall be deemed a reference only to such freight as is payable under the provisions of this Deed.
6. CLAUSES 10 and 12 of the Railway Lease shall cease to have effect and in substitution for the provisions therein contained the following provision shall have effect namely - The rate of freight chargeable on soda goods (as in the railway lease defined) consigned by the Lessees direct from Lake Magadi or any other point on the Railway to the Magadi Pier and Depot Works at Kilidini by the Railway to Magadi Junction and thence over the Kenya and Uganda Railway shall be Sh.18.50 per ton on the actual tonnage consigned. Provided always that if the aggregate amount payable by the Lessees in respect of soda goods so consigned to Kilidini and in respect of any Soda goods (including common salt) consigned outwards from Lake Magadi to any other destination (for which the Lessees shall pay the scale charge from time to time in force on the Kenya and Uganda Railway as provided by Clause 11 of the Railway Lease) shall amount to less than Thirty seven thousand pounds in the period of twelve months covered by this agreement the Lessees shall make good to the High Commissioner for Transport the difference between the aggregate amount payable by

the Lessees on goods actually consigned and the fixed sum of Thirty seven thousand pounds. For the purpose of securing the said minimum payment of Thirty seven thousand pounds the Lessees shall pay to the High Commissioner for Transport the sum of Three thousand and eighty three pounds six shillings and eightpence at the end of each calendar month, or such greater sum as shall be due, having regard to the tonnage rate above provided, in respect of consignments made from Lake Magadi during the month in question provided always that if the amount payable in any month in respect of soda goods (including common salt) so consigned shall amount to more than Three thousand and eighty three pounds six shillings and eightpence no payment in excess of the said fixed sum shall be made to the High Commissioner for Transport until credit has been given to the Lessees for the amount by which the fixed payments in previous months have exceeded the amounts payable in such months by virtue solely of the tonnage consigned from Lake Magadi in such months. In order to give effect to the foregoing the Lessees shall immediately on the execution of these presents pay to the High Commissioner for Transport such a sum as shall be due under the provisions of this Clause in respect of the period from the First November last to the date hereof.

- 7. THE sums payable for freight as hereinbefore provided shall in the Railway Lease be deemed to be the charges therein referred to as the charges for freight therein specified.
- 8. THE Magadi Lease and the Railway Lease and the covenants conditions and provisions therein respectively contained shall during the subsistence of the agreement hereby made operate and have effect as if the modifications and variations hereby made in them respectively had been embodied in the Lease of which the provisions have been hereby modified and varied but otherwise and in all other respects the Magadi Lease the Railway Lease and the Port Lease shall remain in full force and unaffected by any provision herein contained.
- 9. THE provision for Arbitration contained in Clause 14 of the Magadi Lease and Clause 10 of the Railway Lease shall apply to this Deed as if the provisions herein contained were contained in the

Lease of which the provisions are hereby varied and as if the construction meaning or effect of this Deed came for all purposes within these Clauses.

10. THE costs of the preparation execution and stamping of this Deed (including the cost of stamping the same and effecting entries relating thereto in the Registry of Titles for the Colony of Kenya if the Lessees shall decide so to do) shall be borne by the Lessees.

IN WITNESS whereof one of the Crown Agents has hereunto set his hand and seal and the Lessees have caused their Common Seal to be hereunto affixed the day and year first above written.

SIGNED SEALED AND DELIVERED by )  
Sir William Frederick Gowers )  
one of the Crown Agents for the )  
Colonies in the presence of :- )

W. F. GOWERS (LS)

H.C. Ranson,  
of the Crown Agents Office.

THE COMMON SEAL of The Magadi )  
Soda Company Limited was )  
hereunto affixed in the presence )  
of :- )

J.G. Nicholson Director.

(SEAL)

A. E. Gawler Secretary.

(Specs)  
Envelope No. 42  
18674/32.

DATED 18th JULY 1932.

COLONY AND PROTECTORATE OF KENYA.

THE CROWN AGENTS FOR THE COLONIES.

and

THE MAGADI SODA COMPANY LIMITED.

Copy

U S S D

varying covenants in Leases.

Sutton Osmany & Oliver,  
7/8, Great Winchester Street,  
London, E.C.2.

62  
DATED 22ND APRIL 1937.

---

O/KENYA 31 B.

THE MAGADI SODA COMPANY LIMITED

— TO —

THE CROWN AGENTS FOR THE COLONIES.

---

## Surrender

Of the Lease of the Port Branch Railway Line Works and Plant at  
Kilindini, in the Colony and Protectorate of Kenya.

---

BURCHELLS,

5 THE SANCTUARY,

WESTMINSTER, S.W.1.

62

DATED 22ND APRIL 1937.

---

O/KENYA 31 B.

THE MAGADI SODA COMPANY LIMITED

— TO —

THE CROWN AGENTS FOR THE COLONIES.

---

## Surrender

Of the Lease of the Port Branch Railway Line Works and Pier  
Kilindini, in the Colony and Protectorate of Kenya.

---

BURCHELLS,

5 THE SANCTUARY,

WESTMINSTER, S.W.1.

62  
DATED 22ND APRIL 1937.

---

O KENYA 31 B.

THE MAGADI SODA COMPANY LIMITED

THE CROWN AGENTS FOR THE COLONIES.

---

## Surrender

of the East Branch Railway Line Works and Pier at  
Kilindini in the Colony and Protectorate of Kenya

---

BURCHELLS,  
5 THE SANCTUARY,  
WESTMINSTER, S.W.1.



62

DATED 22ND APRIL 1937.

---

O. KENYA 31 B.

THE MAGADI SODA COMPANY LIMITED

- TO -

THE CROWN AGENTS FOR THE COLONIES.

---

## Surrender

The East African Railway Line Works and Pier at  
Eldoret in the Colony and Protectorate of Kenya

---

BURCHELLS,

5 THE SANCTUARY,

WESTMINSTER, S.W.1.

**This Deed**

is made this 22<sup>nd</sup> day of April One thousand nine hundred and thirty-seven BETWEEN THE MAGADI SODA COMPANY LIMITED a Company incorporated in England under the Companies Acts 1908 and 1917 and having its registered office situate at Imperial Chemical House in the City of Westminster (hereinafter called "the Company") of the one part and THE CROWN AGENTS FOR THE COLONIES of 4 Millbank in the said City of Westminster (hereinafter called "the Crown Agents") acting for and on behalf of the Government of the Colony and Protectorate of Kenya (hereinafter called "the Government") and of the Kenya and Uganda Railways and Harbours (hereinafter called "the Administration") of the other part

**WHEREAS**

(1) By a Grant dated the Nineteenth day of February One thousand nine hundred and thirty (usually known and hereinafter referred to as "the Port Lease") registered in the Mombasa Registry as No. C.R. 2209/1 the Governor and Commander-in-Chief of the Colony and Protectorate of Kenya on behalf of His late Most Gracious Majesty King George the Fifth did thereby grant unto the Company the premises described in the First Schedule hereto for a term of Ninety-nine years from the First day of November One thousand nine hundred and twenty subject to the payment of the rent thereby reserved and to the provisions of the Crown Lands Ordinance One thousand nine hundred and fifteen (excepting Part Eleven thereof and except as was therein otherwise provided) to the Registration of Titles Ordinance One thousand nine hundred and nineteen and to the special conditions contained in the Schedule thereto.

(2) The Company have agreed to surrender and the Government to accept a surrender of the Port Lease for the consideration hereinafter appearing.

**NOW THIS DEED WITNESSETH** as follows:—

I. IN consideration of the sum of FIFTY THOUSAND POUNDS paid by the Crown Agents on behalf of the Government and of the Administration on the execution of these presents (the payment and receipt whereof the Company hereby acknowledges) and of the agreements on behalf of the Government and of the Administration hereinafter contained THE Company hereby surrenders and assigns to the Government ALL AND SINGULAR the premises comprised in and demised by the said recited Port Lease and described in the First Schedule hereto TOGETHER with all rights privileges and facilities thereby granted To the intent that the said term of ninety-nine years granted by the said Lease may subject to and with the benefit of the provisions of the Agreements specified in the Second Schedule hereto merge and be absolutely extinguished in the freehold reversion of the Government in the said premises.

II. IN further pursuance of the said agreement and in consideration of the said surrender the Crown Agents on behalf of the Government and of the Administration agree with the Company that as from the date of these presents the provisions and conditions set out in the Third Schedule hereto shall come into full force and effect and the Company agrees to accept and be bound by the same provisions and conditions.

**This Deed** is made this 22nd day of April One thousand nine hundred and thirty-seven BETWEEN THE MAGADI SODA COMPANY LIMITED a Company incorporated in England under the Companies Acts 1908 and 1917 and having its registered office situate at Imperial Chemical House in the City of Westminster (hereinafter called "the Company") of the one part and THE CROWN AGENTS FOR THE COLONIES of 4 Millbank in the said City of Westminster (hereinafter called "the Crown Agents") acting for and on behalf of the Government of the Colony and Protectorate of Kenya (hereinafter called "the Government") and of the Kenya and Uganda Railways and Harbours (hereinafter called "the Administration") of the other part

**WHEREAS**

(1) By a Grant dated the Nineteenth day of February One thousand nine hundred and thirty (usually known and hereinafter referred to as "the Port Lease") registered in the Mombasa Registry as No. C.R. 8202/1 the Governor and Commander-in-Chief of the Colony and Protectorate of Kenya on behalf of His late Most Gracious Majesty King George the Fifth did thereby grant unto the Company the premises described in the First Schedule hereto for a term of Ninety-nine years from the First day of November One thousand nine hundred and twenty-four subject to the payment of the rent thereby reserved and to the provisions of the Crown Lands Ordinance One thousand nine hundred and fifteen (excepting Part Eleven thereof and except as was therein otherwise provided) to the Registration of Titles Ordinance One thousand nine hundred and nineteen and to the special conditions contained in the Schedules thereto.

(2) The Company have agreed to surrender and the Government to accept a surrender of the Port Lease for the consideration hereinafter appearing.

**NOW THIS DEED WITNESSETH** as follows:—

I. IN consideration of the sum of FIFTY THOUSAND POUNDS paid by the Crown Agents on behalf of the Government and of the Administration on the execution of these presents (the payment and receipt whereof the Company hereby acknowledges) and of the agreements on behalf of the Government and of the Administration hereinafter contained THE COMPANY hereby surrenders and assigns to the Government ALL AND SINGULAR the premises comprised in and demised by the said recited Port Lease and described in the First Schedule hereto TOGETHER with all rights privileges and facilities thereby granted. To the intent that the said term of ninety-nine years granted by the said Lease may subject to and with the benefit of the provisions of the Agreements specified in the Second Schedule hereto merge and be absolutely extinguished in the freehold reversion of the Government in the said premises.

II. IN further pursuance of the said agreement and in consideration of the said surrender the Crown Agents on behalf of the Government and of the Administration agree with the Company that as from the date of these presents the provisions and conditions set out in the Third Schedule hereto shall come into full force and effect and the Company agrees to accept and be bound by the same provisions and conditions.

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III. IT IS HEREBY MUTUALLY AGREED that if from any cause this Deed is not executed prior to the Thirty-first day of December One thousand nine hundred and thirty-six then and in such case the surrender provisions and conditions shall be deemed to have taken effect in operation on that date.

IV. NEITHER the Governor of Kenya nor the Crown Agents or any of them nor any Officer either of the Government or of the Administration shall be in anywise personally bound or liable for any default or omission in the observance or performance of any of the acts matters or things which are hereinbefore contained.

IN WITNESS whereof The Magadi Soda Company Limited has caused its Common Seal to be hereunto affixed and Sir W. J. van Erismark Gowers K.C.M.G. one of the Crown Agents for the Company hath hereunto set his hand and seal the day and year first above written.

THE FIRST SCHEDULE above referred to

As that piece of land situate on Mombasa Island in the Mombasa District of the Extra Provincial Province of the said Colony containing by measurement 25.2 acres more or less that is to say, Portion No. Section No. 1 of Land Office No. 111 of Mombasa District South R37, 2 which

said piece of land with the dimensions abutments and boundaries thereof is delineated on the plan drawn on the Port Lease and more particularly on Land Survey Plan No. 202 deposited in the Land Survey Office at Mombasa together with the buildings and erections standing thereon and including the Depot Works together also with the pier known as Belgamati Pier including the conveyor Plant and apparatus used in connection therewith and the Branch Railway Line leading from the Kenya and Uganda Railway at Kalandini to the said Depot Works together with all appurtenances but not including the land upon which the said pier and conveyor plant are constructed. Being reserved nevertheless out of the Port Lease and reserving unto the Government as aforesaid particularly in the schedule thereto accepted and reserved.

THE SECOND SCHEDULE above referred to

An Agreement dated the 1st January 1931 and made between the Company of the one part and the Shell Company of East Africa Limited of the other part providing (inter alia) for the renting to the Shell Company of No. 2 berth at Mombasa at a annual net hire rental of £150.

An Agreement dated the 23rd October 1931 and made between the Company of the one part and the East African Power & Lighting Company Limited of the other part providing (inter alia) for the carrying by the Power Company of an electric supply line over certain of the premises demised in favour of the Company by the Port Lease.

THE THIRD SCHEDULE above referred to

PROVISIONS AS TO THE RAIL-BORNE TRAFFIC OF THE COMPANY TO COME INTO FORCE AS FROM THE DATE OF THE SURRENDER OF THE PORT LEASE.

1. All soda goods (other than common salt) as defined in the Lease of a Railway to Lake Magadi granted by the Government to the Company for a term of 99 years from the 1st day of November 1924 (hereinafter referred to as "the Railway Lease") despatched from Magadi to the Coast will be railed subject to the rates and other conditions set out in the Railway Lease or as the same may be altered or modified from time to time by agreement between the parties thereto such rates and conditions covering the carriage of the goods from Magadi to the Coast.

2. The Administration shall undertake the handling of such goods on arrival at the Port of Mombasa including the taking of the goods from the trucks and placing them in store in the go-down and also when for the Company have a ship available the removal of the goods from the go-down and the placing of the goods alongside the ship for shipment with all reasonable despatch. The Company shall pay 5 sh. 90 cents per ton for these services irrespective of the tonnage handled per year. The last-mentioned charge of 5 sh. 90 cents per ton shall include off-loading, wharfage and handling and the use of the conveyor.

Provided that in cases where a ship is loaded with soda goods (other than common salt) at any berth at the Port of Mombasa other than Belgamati Pier the Administration shall credit the Company with—

(a) In respect of cradage charges incurred by a ship for the cradage of soda goods (other than common salt) during ordinary working hours. The full amount of such cradage charges so incurred.

and

(b) In respect of cradage charges incurred by a ship for the cradage of soda goods (other than common salt) in other than ordinary working hours. An amount equal to the amount that would have been due for such services had they been performed in ordinary working hours.

3. All ships chartered or otherwise engaged by the Company shall berth alongside the pier at Belgamati provided the goods to be loaded amount to not less than 200 tons and provided further that such pier is available. Should the pier at Belgamati not be available all vessels chartered or otherwise engaged by the Company shall take up such berth as the Port Management may direct.

In the event of tonnage to be loaded in each ship not amounting to 200 tons such ship shall be loaded at such berth as the Port Management may direct.

III. IT IS HEREBY MUTUALLY AGREED that if from any cause this Deed is not executed prior to the Thirty-first day of December One thousand nine hundred and thirty-six then and in such case the foregoing surrender provisions and conditions shall be deemed to have come into operation on that day.

IV. NEITHER the Governor of Kenya nor the Crown Agents or any of them nor any Officer either of the Government or of the Administration shall be in anywise personally bound or liable for any default or omission in the observance or performance of any of the acts matters or things which are hereinbefore contained.

IN WITNESS whereof The Magadi Soda Company Limited has caused its Common Seal to be hereunto affixed and Sir William Frederick Gowers K.C.M.G. one of the Crown Agents for the Colonies hath hereunto set his hand and seal this day and year last above written.

THE FIRST SCHEDULE above referred to

All that piece of land situate on Mombasa Island in the Mombasa District of the Extra Provincial Province of the said Colony containing by measurement 18.25 acres more or less that is to say Portion No. Section No. 1 72 Land Office No. 1135 of Mombasa District South B 37 which said piece of land with the dimensions abutments and boundaries thereon is delineated on the plan drawn on this Seventeenth day of June particularly on Land Survey Plan No. 21928 deposited in the Land Survey Office at Nairobi together with the buildings and systems standing thereon and including the Depot Works together also with the pier known as Shipping 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 Port Lease and reserving unto the Governor as is more particularly in the Schedule therein set out and reserved.

THE SECOND SCHEDULE

An Agreement dated the 1st January 1901 and made between the Company of the one part and the Shell Company of East Africa Limited of the other part providing inter alia for the carrying to the Shell Company of No. 2 tankers at a maximum monthly rental of £100.

An Agreement dated the 29th October 1901 and made between the Company of the one part and the East African Power & Lighting Company Limited of the other part providing inter alia for the carrying by the Power Company of all electric supply line over certain of the premises demised in favour of the Company by the Port Lease.

THE THIRD SCHEDULE above referred to

PROVISIONS AS TO THE RAIL-BORNE TRAFFIC OF THE COMPANY TO COME INTO FORCE AS FROM THE DATE OF THE SURRENDER OF THE PORT LEASE.

1. All soda goods (other than common salt) as defined in the Lease of a Railway to Lake Magadi granted by the Government to the Company for a term of 99 years from the 1st day of November 1924 (hereinafter referred to as "the Railway Lease") despatched from Magadi to the Coast will be railed subject to the rates and other conditions set out in the Railway Lease or as the same may be altered or modified from time to time by agreement between the parties thereto such rates and conditions covering the carriage of the goods from Magadi to the Coast.

2. The Administration shall undertake the loading of such goods on arrival at the Port of Mombasa including the taking of the goods from the tracks and placing them in store in the god-down and also whenever the Company have a ship available the removal of the goods from the god-down and the placing of the goods alongside the ship for shipment with all reasonable despatch. The Company shall pay 5 sh 90 cents per ton for those services irrespective of the tonnage handled per year. The said mentioned charge of 5 sh 90 cents per ton shall include off-loading wharfage and handling and the use of the conveyor.

3. Provided that in cases where a ship is loaded with soda goods (other than common salt) at any berth of the Port of Mombasa other than Shimani Pier the Administration shall credit the Company with

in respect of storage charges incurred by a ship for the storage of soda goods (other than common salt) during ordinary working hours

The full amount of such storage charges as incurred

and  
in respect of storage charges incurred by a ship for the storage of soda goods (other than common salt) in other than ordinary working hours

An amount equal to the sum that would have been due for such services had they been performed in ordinary working hours

4. All ships chartered or otherwise engaged by the Company shall berth alongside the pier at Shimani provided the goods to be loaded amount to not less than 200 tons and provided further that such pier is available. Should the pier at Shimani not be available all vessels chartered or otherwise engaged by the Company shall take up such berth as the Port Management may direct.

In the event of tonnage to be loaded in each ship not amounting to 200 tons such ship shall be loaded at such berth as the Port Management may direct.

In cases where for the convenience of the Administration a vessel is loaded with soda goods at more than one berth or in the case of a vessel shifting berths under 200 tons at Shimanzi Pier no charge shall be levied for shifting such vessel.

4. The Administration shall provide warehouse space in the warehouse at Shimanzi for a maximum storage of 5,000 tons of soda goods at any one time. Provided that the Administration may in the interests of Port working of which the Port Management shall be the sole judge warehouse such soda goods in such other place or places in the Port of Mombasa as it may deem necessary. The Company shall pay an inclusive rent of £500 per annum for such warehouse accommodation free of rates to be payable half-yearly on the 1st day of January and the 1st day of July in every year. The Administration shall maintain the said warehouse accommodation in such a state of repair as to avoid soda goods lying in the warehouse becoming damaged by weather.

5. Should the Company at any time have more than 5,000 tons of soda goods (excluding common salt) warehoused in the Port of Mombasa all tonnage in excess of 5,000 tons shall be paid for at the rate of 25 cents per ton per week or part of a week.

The Administration shall at all times endeavour to meet the demands of the Company for warehouse accommodation in excess of 5,000 tons provided that the Company to the Administration adequate notice of the Company's requirements.

6. Provided that the necessary shipping or other disposal arrangements are made by the Company the Administration shall arrange all soda goods warehoused as aforesaid as to ensure that no stock shall be allowed to remain in such warehouse accommodation in the Port of Mombasa for more than three months.

7. The Administration shall at all reasonable times allow the Company's representatives access to the warehouse accommodation in the Port of Mombasa for the purpose of inspecting and checking the stock for the time being lying there, and shall undertake the rebagging of stock at the prevailing charges set out in the Tariff of Harbour Dues and Charges.

8. Subject to the provisions of Section 22 of the Harbours Regulation Ordinance 1928 which shall be deemed to apply hereto the Administration shall load soda goods into vessels whether alongside Shimanzi Pier or any other berth in the Port of Mombasa at a rate of not less than 500 tons per weather working day (Sundays and Holidays excepted).

9. The Administration shall provide at owners' risk free warehousing accommodation for nets used in the process of loading soda goods and which nets are the property of shipping companies using the berth at the said pier for the purpose of loading soda goods.

10. The Administration shall take such reasonable measures as may be necessary to ensure that any vessel drawing up to 28 feet shall at all times be able to load afloat at L.W.O.S.T. at Shimanzi Pier subject

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to the condition that the Administration shall have the right to direct that no vessel shall load at the said pier if in the opinion of the Port Management such course is deemed necessary.

11. Nothing in this Schedule contained shall be construed or be deemed to limit the right of the Administration at any time to close the said pier and/or the other premises described in the First Schedule hereto for the shipment or storage of soda goods either temporarily or permanently in whole or in part or to alter the said pier and/or ~~part~~ of the said premises or construct a new pier and/or other of the said premises provided that in any such event the charges set out herein for off-loading handling wharfage and warehousing in respect of soda goods the property of the Company shall remain in full force and effect and the Company shall be provided with warehousing and facilities for shipping not less favourable than those provided before any such closure as aforesaid.

12. All goods (other than soda goods) imported or exported by the Company through the Port of Mombasa shall be subject to the charges in respect thereof set out in the Tariff of Harbour Dues and Charges from time to time in force.

13. The work to be performed hereunder by either party shall be subject to the provisions of the Harbours Regulation Ordinance 1928 and to any regulations made thereunder and when performed in overtime outside the ordinary working hours shall be subject to the provisions for overtime work contained in the Tariff of Harbour Dues and Charges from time to time in force.

14. For the purposes of this Schedule —  
"Ton" shall mean a ton of 2,240 lbs.

15. The provisions contained in this Schedule shall remain in force for the duration of the Railway Lease but shall determine at the expiration or sooner determination of the Railway Lease or if the Company shall go into liquidation or cease to carry on business in either of which two latter events the Administration shall have no claim under this Deed against the Company in respect of such determination.

16. If during the currency of the arrangements set out in this Schedule there shall be a substantial increase or decrease in the tonnage of soda goods warehoused in the Port of Mombasa or in the Administration's cost of carrying out the services to be performed hereunder either party will sympathetically consider any proposal which may be brought forward by the other party for a modification of the terms herein set out.

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

H. F. MARRIOTT  
A. E. GAWLER } Directors.  
J. D. EARLAM, Secretary.

SIGNED SEALED and DELIVERED  
By Sir William Frederick Gowers one  
of the Crown Agents for the Colonies  
in the presence of

W. F. GOWERS

(L.S.)

ALFRED W. BUCHHELL,  
of The Sanctuary,  
Westminster,  
Solicitor

N. H. C.

J. M. H. H.

London, S.W. 1.

and Servants

DATED 22ND APRIL 1937.

---

O/KENYA 31 B

The Magadi Soda Company  
Limited

— to —

The Crown Agents for the  
Colonies.

---

**Surrender**

Of the Lease of the Port Branch Railway  
Works and Pier at Kilindini, in the  
Colony and Protectorate of Kenya.

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BURCHELLS,

5 The Sanctuary,  
Westminster, S.W.1.

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The Solicitors' Law Stationery Society, Ltd., Law & Company Printers,  
Abbey House, E.C.4. W.143248-24124



DATED 22ND APRIL 1937.

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O/KENYA 31 B

The Magadi Soda Company  
Limited

TO

The Crown Agents for the  
Colonies

---

### Surrender

Of the Lease of the Port Branch Railway  
Line Works and Pier at Kilindini, in the  
Colony and Protectorate of Kenya.

---

BURCHELLS,

5 The Sanctuary,

Westminster, S.W.1.

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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.

BUTTON, OSMANNEY & 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, OSMANNY & 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, OSMANNY & 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.20/-

Term 99 years From 1.11.1924 to 31.10.2023.

I quote all Men by whom that for the consideration hereinafter expressed I EDWARD WILLIAM MACLEAY BRIGGS Esq. Commander of the Royal Victorian Order Companion of the Most Distinguished Order of Saint Michael and Saint George Companion of the Distinguished Service Order and whom His Majesty has conferred the distinction 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 make 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 Buildings 36 & 38 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 those two pieces of land situate at Lake Magadi in the Masai Province of the said Colony containing together by measurement Two hundred and twenty-two thousand seven hundred and eighty-eight acres more or less that is to say Land O.S. No. 1023 and 3567 of Meridional District South A 37 G. III. a & d and MT. A & B which said pieces of land with the dimensions

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# COLONY OF KENYA.

## REGISTRY OF TITLES.

(District)

Title No.

ANNUAL RENT Sh20/-

TERM 99 years From 1.11.1924 to 31.10.2023.

Know all Men by these presents that for the undersigned hereinafter expressed I EDWARD WILLIAM MATHIAS GRIGG Knight Commander of the 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 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 Buildings 54/54 Broadway in the City of Westminster (hereinafter referred to as the Leases with expression shall where the context so admits include their successors and permitted assigns) All those two pieces of land situate at Lake Magadi in the Masai Province of the said Colony containing together by measurement Two hundred and twenty-two thousand seven hundred and eighty-eight acres more or less that is to say Land Office Nos. 1028 and 1357 of Meridional District South A 37 and South A 37 and M.T. 4 1/2 which said pieces of land with the dimensions



abuttals and boundaries thereof are delineated on the plan drawn on these presents and more particularly on Land Survey Plan No. 12767 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 twenty 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 herein otherwise provided) to the Registration of Titles Ordinance One thousand nine hundred and twenty-four 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-four in the presence of \_\_\_\_\_

[SCHEDULE.]

## 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 Kenya Colony and Protectorate (hereinafter referred to as "the Government") of the one part and THE MAGADI SODA COMPANY LIMITED of the other part incorporated pursuant to the laws of England under the Companies Acts 1908 to 1917 and having their registered office at Broadway Buildings 60/61 Broadway in the City of Westminster (hereinafter referred to as "the Lessees" which expression shall where the context so admits include their successors and assigns) of the other part.

Whereas by an Indenture (hereinafter called "the Railway 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 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 is intended to be 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 said Railway.

And whereas the Lessees are desirous of working certain deposits of soda at Lake Magadi in Kenya Colony and Protectorate and have agreed to take and the Government have agreed to grant a Lease of the lands and premises hereinafter mentioned for the term and subject to the provisions and conditions hereinafter appearing:

Now this Indenture witnesseth as follows that is to say:—

abuttals and boundaries thereof are delineated on the plan drawn on these presents and more particularly on Land Survey Plan No. 12767 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 twenty payable in advance on the First day of January in every year and in proportion for any 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) 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 of Nairobi this \_\_\_\_\_ day of \_\_\_\_\_ One thousand nine hundred and twenty \_\_\_\_\_ in the presence of \_\_\_\_\_

[SCHEDULE]

## 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 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 at Broadway Buildings 60/64 Broadway in the City of Westminster (hereinafter referred to as "the Lessees" which expression shall where the context so admits include their successors and assigns) of the other part.

Whereas by an Indenture (hereinafter called "the Railway Lease") already made 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 title the Railway commencing at Magadi Junction on the Kenya and Uganda Railway and thence passing to the 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 is intended to be 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 said Railway.

And whereas the Lessees are desirous of working certain deposits of soda at Lake Magadi in Kenya Colony and Protectorate and have agreed to take and the Government have agreed to grant a Lease of the lands and premises hereinafter mentioned for the term and subject to the provisions and conditions hereinafter appearing:

Now this Indenture witnesseth as follows that it is to say:—

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 or any of the following:

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

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

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

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

(G) "Month" means calendar month.

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 LO. No. 1026 of Meridional District South A 37 G111 c & d and secondly all that piece of land situate at Lake Natron in the Masai Province of the Colony containing by admeasurement

11,304 acres more or less that is to say LO. No. 3867 of Meridional District South A 37 which said two pieces of land containing together 211,110 and 11,304 acres more or less are bordered and delineated 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. 12,767 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 winning working treating raising stocking dressing conveying manufacturing transporting or otherwise disposing of the 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 treasures relics antiquities and other similar things lying in on 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  
 "The Colony"  
 "The Government"  
 "The Governor"  
 "The Magadi Soda Deposit"  
 "Soda Goods"  
 "The Lease"  
 "Month"

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

- (a) "The Colony" means 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 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.
- (e) "Soda Goods" means all or any of the following:
  - (i) "Raw Soda" that is to say carbonate of soda or carbonate of soda or soda mixed with any other salts as obtained from the Magadi Soda Deposit before calcination.
  - (ii) "Soda Ash" 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 of the articles or preparations commonly recognised as soda products in the chemical industry.
  - (iv) "Manufactured Soda" that is to say any articles or preparations of which soda or soda products as above mentioned respectively form the essential or main constituents.
- (f) "The Lease" means the first before recited Lease of the said lands.
- (g) "Month" means calendar month.

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. 1029 of Meridional District South A 37 G 111 c & d 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 G 111 a and b 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. 12,767 deposited in the Land Surveys Office at Nairobi Together with the Magadi soda deposit 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 structures reservoirs water-races roads railways 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 dressing stocking dressing converting manufacturing transporting or otherwise disposing of the Magadi Soda Deposit.

Excepting nevertheless out of the demise hereby made first 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 similar things lying in on 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 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 as 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 Agents 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 affect prejudicially the working of the Magadi Soda Deposit or the exercise or enjoyment of the liberties hereby granted.

To hold unto the Lessees for the term of 99 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 on the execution of these presents as the Crown Agents and the Government hereby acknowledge.

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

(a) 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 Products and soda contained in Manufactured Soda on which royalty has been paid by the Lessee 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 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 Magnesian 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 and persons authorized 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 Agents and the Government and their Lessees and persons authorized by them shall exercise the rights and liberties hereby reserved in a manner so as not to interrupt interfere with or affect prejudicially the working of the Magnesian Soda Deposit or the exercise or enjoyment of the liberties hereby granted.

To hold unto the Lessees for the term of 60 years from the 1st day of November 1929 ending and paying the rent and royalties hereinafter reserved and subject to the provisions hereinafter contained.

The Lessees shall during the said term pay the yearly rent of twenty pounds 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.

On the 1st day of October 1929 no royalty shall be payable hereunder.

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 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.

6. The Lessees for themselves their successors and assigns hereby LEASEE COVENANTS 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 hereinafter 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.

To work

(iv) The Lessees will forthwith commence and thereafter during the continuance of the term hereby granted rigorously 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 the present lease 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 provisions.

Yearly minimum workings

(v) (A) Without prejudice to 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, 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 any deficiency 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.

Not to obstruct working of adjacent works

(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 persons authorized by them of the excepted minerals or to the transport conveyance or possession 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 transverse 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 up to and so far as reasonably practicable and necessary for the proper working of the Magadi Soda Deposit except only such part 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 permit entry and work

(viii) The Lessees will permit the Crown Agents and the Government and any person or persons authorized by them or either of them in their 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 the Lessees 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

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 on such account be binding on the Lessees.

To work

(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 skillful 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 prudently 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.

Yearly minimum workings

(v) (a) Without prejudice to or in any way limiting the provisions 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, 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 the amount respect thereof.

(b) If and whenever the Lessees shall in any year have made default to the extent of 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 authorized by them of the excepted minerals or to the transport conveyance or occupation 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 fire 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 will keep open (or as reasonably practically 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 authorized by them or either of them in their behalf at all reasonable times to enter upon the deposit and examine the deposit fields and the Magadi Soda Deposit and every part thereof respectively to ascertain the condition thereof and means 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 require 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 machinery 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



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 of 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 public or private 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 the construction of any work 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 money so paid and of the costs incurred thereon by the Government provided that 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 administration 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 infringe 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

Office to be provided for service of notices

No arms or ammunition to be sold to natives

Natives rights

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 stores and attendants medicines and medical stores for the like use as may be necessary.

Notes 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.

To draw up

(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.

Not to assign without license

(xxi) (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 business without the previous consent in writing of the Crown Agents but such consent shall not be unreasonably withheld and this provision 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 underlet or any Agreement for the same shall be executed deliver to the Crown Agents an instrument 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 underlettee with the Crown Agents and also separately with the Government to perform and observe during the term assigned or underletted all 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 underlettee 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 or breach of any of the said covenants by the intended assignee or underlettee.

(C) Provided also that upon any assignment of the demised premises or any part thereof being made in accordance with these presents if such instrument as aforesaid 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.

(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 appointment hereunder.

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

thereof by the Government and thereafter provided the interruption shall not affect prejudicially the general working of the Magadi Soda Deposit shall not continue working at adjacent to the thing found except in accordance with any reasonable instructions given by the Government for the purpose of avoiding injury to the thing found.

To surrender in exchange for new Lease when Government survey made

(xxiv) (A) If and when the demised lands shall have been surveyed by or on behalf of the Government the Lessees shall at any time thereafter upon the request in writing of the Crown Agents or the Government forthwith surrender this Lease and accept in exchange therefor a new Lease containing a proper description of the property as ascertained by such survey.

(B) The new Lease shall be for the residue then unexpired of the term hereby granted and shall contain *mutatis mutandis* the same terms and provisions in all respects as this Lease.

(C) The Lessees will pay the costs of the Crown Agents and the Government of and incidental to the preparation and execution of the Surrender and new Lease and of and incidental to the survey of the demised land.

(D) The Surrender shall be and shall be expressed to be 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.

6. Provided always and thereupon are upon the express conditions following:

Lessee to be British 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 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 Lessees or any such Company or Corporation as aforesaid shall at any time cease to be a British Company 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 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.

7. The Crown Agents hereby covenant with the Lessees that the Lessees paying the rent and royalties hereby covenanted 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 Government or any persons rightfully claiming from or under them.

8. Provided always that if and whenever the said rent and royalties hereby reserved or made payable 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 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 to re-enter into and upon the demised premises or any part

thereof in the name of the whole and to have again re-possess and enjoy the same as in their former estate. And thereupon this Lease and the liberties hereinbefore 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 provisos for re-entry contained in leases of similar property or rights in England.

Members of  
office  
Government not  
to be personally  
liable

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

Certificate of  
the Governor

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

Notice to  
be given to Lessees

11. All notices to be given to the Lessees for the purposes of this Lease shall be in writing under the hand of the Governor or of the Crown Agents or one of them or a person appointed by them or him and shall either be delivered to or left for the Lessees at the office hereinbefore provided to be provided and maintained by them on the demised premises or at their registered office for the time being in England or at their principal or last known place of business in the Colony.

Approved by the  
Government and  
Crown Agents

12. Every approval or notice to be given or served by or on behalf of the Government or the Crown Agents may be given by writing signed by the Governor or one of the Crown Agents.

Force majeure

13. 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 any any of the following causes namely the act of God insurrection riots war strikes or combinations or lock-outs 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.

14. (i) In case and so often as any dispute difference or question shall arise between the said 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 demised premises or the Lessees works or any part thereof respectively or the construction meaning or effect of these presents or of any award made in pursuance hereof or any clause or thing contained in this Lease 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 under these presents or any award made as aforesaid then (except in any case and as to any matter for which other provision is hereinbefore made) the subject of every such dispute difference or question shall in every case be referred in writing of either party to the arbitration and award of an umpire if the parties can agree on an umpire and in case they cannot 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 such 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 on 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 so think fit several awards instead of one award and every

Arbitrators may  
make several awards

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.

May proceed in part

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

May require books and accounts and examine in court

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

And provide for same

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

Nothing shall be binding unless signed

15. The marginal notes hereto are for the sake of convenience only and shall not affect the interpretation or construction of these provisions.

In WITNESS WHEREOF one of the Crown Agents has hereunto set his hand and seal and the Lessees have caused their respective seals to be hereunto affixed the day and year first above written.

Signed sealed and delivered by Sir Henry Charles Miles Lambert one of the Crown Agents for the Colonies in the presence of

HENRY LAMBERT.

(S)

W. A. F. WICKHAMPTON.

Crown Agents Office.

The Common Seal of The Napier & Co. Company Limited was hereunto affixed in the presence of

(S)

J. G. NICHOLSON, Director.

A. H. GAWLER, Secretary.

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.

May proceed as per

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

May inspect books and accounts and examine witnesses

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

And provide for same

(14) The costs of the reference and the awards shall be in the discretion of the arbitrator and umpire and such costs may be awarded as between solicitor and client.

Magistrate's seal and to affirm jurisdiction

15. The foregoing rules herein are for the sake of convenience only and shall not affect the interpretation or construction of the provisions herein.

In witness whereof the (Company) has hereunto set its hand and seal and the Lessee have caused their Common Seal to be hereunto affixed this 15th day of June 1911.

Signed and stamped by Sir Henry Charles James Lambart one of the Clerks of the Crown in Chancery

HENRY LAMBERT.

HENRY WICKHAM

Clerk of the Crown in Chancery

The Common Seal of The Magenta Lake Company Limited was hereunto affixed in the presence of

J. G. NICHOLSON, Director

A. R. GAWLER, Secretary

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COLONY AND PROTECTORATE OF KENYA.

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Lease

OF

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

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DATED 20th MARCH, 1922.

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

(2511)



# COLONY OF KENYA.

## REGISTRY OF TITLES.

DISTRICT

TITLE No.

ANNUAL RENT One peppercorn.

Term 99 years From 1.11.1924 to 31.10.2023.

**Anobu all Men** by their presents that for the consideration hereinafter expressed I EDWARD WILLIAM MAULEAY 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-General 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 Act 1906 to 1917 and having its registered office at 21st Broadway Buildings 20/21 Broadway in the City of Westminster (hereinafter referred to as the Lessee which expression shall where the context so admits include their successors and permitted assigns) All that piece of land situate in the Province of the said Colony containing acres more or less that is Land Office No. of which said piece of land with

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Merical District

# COLONY OF KENYA.

## REGISTRY OF TITLES.

(DISTRICT)

Title No.

ANNUAL RENT One per cent

TERM 99 years From 1.11.1924 to 31.10.2023

**Trusts all Men** by their presentator for the

consideration hereinafter expressed I EDWARD WILLIAM MAUREAY BRIGG 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 order 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 Buildings 60, 61 Broadway in the City of Westminster (hereinafter referred to as the Lessee which expression shall where the context so admits include their successors and permitted assigns) all that piece of land situate

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Municipal District

Province of the said Colony containing  
acres more or less that is  
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which said piece of land with

the dimensions abutments and boundaries thereof is delineated on the plan drawn on these presents and more particularly on Land Survey Plan Number \_\_\_\_\_ deposited in the Land Survey 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 conveyer 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 land upon which the said pier and conveyer plant are constructed. Excepting nevertheless out of the grant 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 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-four in the presence of \_\_\_\_\_

GOVERNOR

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 situated at Broadway Buildings 51/54 Broadway in the City of Westminster (hereinafter referred to as "the Lessees" which expressions shall where the context so admits include their successors and permitted assigns) of the other part.

Witness by an Indenture (hereinafter called "the Magadi Lease of Magadi Soda Deposits") bearing even date with and executed before those present 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 1928 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 thereon.

And witness by an Indenture (hereinafter called "the Railway Lease") bearing even date with and executed before those present 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 is delineated on the plan drawn on these presents and more particularly on Land Survey Plan Number \_\_\_\_\_ deposited in the Land Survey Office at Nairobi together with the buildings and erections standing thereon and including the Depot Works together also with the pier known as Shimani 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 conveyor plant is to be constructed. Excepting nevertheless out of the grant hereby made and reserving \_\_\_\_\_ Governor as is more particularly in the Schedule hereto excepted and reserved TO HOLD for the term of \_\_\_\_\_ nine 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 \_\_\_\_\_ 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 fifteen (excepting Part I thereof) 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-four presence of \_\_\_\_\_

(SIGNED)

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 57/58 Broadway in the City of Westminster (hereinafter referred to as "the Lessees" which expression shall where the context so admits include their successors at) (permitted assigns) of the other part

Witness 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 sulphate of soda therein

Lessees of Magadi Lake Deposits

And witness 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:-

Interpretation

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.

2. The Crown Agents for and on behalf of the Government hereby grant and demise to the Lessees Firstly all that 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.

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

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

All mines minerals and mineral substances including precious stones and all coins treasure relics antiquities and 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 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.

Minerals,  
precious stones, etc.

- (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

In case of urgency  
to take possession

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 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 Deed witnesseth and it is hereby agreed and declared as follows:-

Interpretation

1. In these presents the following expressions 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) "Shimanzu 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.

2. The Crown Agents for and on behalf of the Government hereby grant and demise to the Lessees Firstly all that Depot Works at Shimanzu 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 Shimanzu 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.

Demise of Depot  
Works, Shimanzu  
Pier, Branch  
Railway Line and  
conveyances to  
Lessees

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 other 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 to 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

All mines  
precious stones

In case of urgency  
to take possession



and other things of 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 use 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 upon 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

Lessee to determine if Magull Lease determined

3. If the Magull Lease shall be determined in any manner whatsoever then the Lessees shall pay to the Government in the province 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 the covenants or provisions herein contained

4. The Lessees shall upon the execution of these presents pay to the Crown Agents the sum of £1000 and during the said term pay the yearly rent and payments yearly in advance on the 1st day of January in every year and the payment of rent for the first two years of the said term having been made on the execution of these presents shall be deemed to have been duly acknowledged.

5. Provided always that if and whenever the said rent or any part thereof shall be in arrear for the space of 30 days after the day when the same ought to be paid or demanded (whether the same shall or shall not have been legally demanded) or if there shall be any breach or non-compliance of any of the covenants on the part of the Lessees (whether together or otherwise) herein contained or if the Lessees while the said premises or any part thereof remain vested in them shall go into liquidation or become bankrupt or compulsory (except with the consent in writing of the Government or a statutory authority 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 said premises or any part thereof in the name of the whole to re-enter and the same to have again possession 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 the 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 by 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 shall pay the rent hereinafter reserved at the times and in the manner aforesaid.
- (ii) The Lessees shall not use or suffer to be used the said premises or any part thereof for any purpose other than and except only purposes directly connected with working the deposits of cargoes of goods under the Magull Lease or with the export of such goods.
- (iii) 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 Chittagong Pier of things incidental to the export of such goods.
- (iv) The Lessees shall not use or suffer to be used Chittagong Pier or any part thereof for any purpose other than and except only (1) loading vessels with such goods or (2) unloading from vessels goods of all or other articles required for and incidental to working the said deposits of goods under the Magull Lease or (3) unloading



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 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.

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 in repair

(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 use of the Magadi Soda Deposit) and the same in good and substantial repair and condition in working order deliver up to the Government at the expiration or (subject to the provisions of Clause 12 presents) sooner determination of the term thereby 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 on notice

(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 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 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

Office to receive notices

In case of emergency to be ready to take up

Provisional Order to be made by the Government

- (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 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 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 the 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 left 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 Government 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 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.

As to liability of Lessees to special sanitary measures

Native labour

Covenant for quiet enjoyment

Lessees to be and remain British

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 and on the Lessees' part to be observed and performed shall peaceably and quietly possess and enjoy the demised premises during the said term with any lawful interruption from or by the Crown Agents or the Government or any persons rightfully claiming from or under them.

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

- (i) The Lessees and any company or corporation becoming by assignment or otherwise 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 the 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.

To comply with Ordinances

Not to interfere with public or private rights

To indemnify Government against claims

Office for services of Lessees

Not to sell or otherwise dispose of any arms or other dangerous articles

The regulations relating to the sale of spirits and other intoxicating liquors

- (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 and 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 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 any Railway by the High Commissioners 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 left 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 other dangerous articles 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 Government 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 of the 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.

As to liability of Lessees to special sanitary measures

Native labour

Covenant for quiet enjoyment

to be and remain British

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 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.

8. Provided always that the conditions 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 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 29 years after the expiration of the term 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

At the expiration of the term of 29 years hereby granted (but not on the earlier 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 purchase in part of the demised premises

If this lease shall be determined otherwise than by effluxion of time and if at the expiration of the term of 29 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 at any part thereof at the price hereinafter specified or a proportionate part thereof upon giving to the Lessees one month's notice in writing in that behalf such notice to be given with effect after the determination of the Lease. If such notice be not given or if such notice be given in regard to part of the property and assets of the Lessees at aforesaid the Lessees shall be entitled within twelve months from the determination of the Lease to remove to the Magadi Pier and Depot Works and the assets and property of the Lessees as aforesaid and such parts thereof as are not included in any such notice.

Option to purchase in part of the demised premises

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 assets of the Lessees under these presents at the price hereinafter mentioned or a proportionate part thereof upon giving to the Lessees one month's notice in writing in that behalf.

Option to purchase in part of the demised premises

If the Government shall exercise this power then from and after the completion of the purchase and the expiration of a certain

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 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 13 (ii) 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 hereinafter 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. (1) Every defendant 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 not be valid or enforceable therein in so far as it purports to create any charge upon the demised premises or any part thereof or upon any other asset or property of the Lessees.

(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 other members 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 in 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 earlier 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 on expiry of term

10. If this lease shall be determined otherwise than by effluxion of the said term or if 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, 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 obliged within twelve months from the determination of the lease to remove the Magadi Pier and Depot Works and all the assets and property of the Lessees as aforesaid or such parts thereof as are included in any such notice.

Option to Government to purchase at any time

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 assets 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 retain certain rights

(ii) If the Government shall exercise this present right then from and after the completion of the purchase until the expiration of 60 days

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 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 (ii) 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 hereinafter conferred on the Government are without prejudice to all or any other rights of the Crown Agents to the Government under or by virtue of these presents.

15. (i) Every debenture or other instrument hereinafter 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 some of the said rights of purchase.

Limit on option to purchase

Extent of purchase not to prejudice other rights

Exercise of rights of purchase to be in the order of priority

Property to be transferred free from all encumbrances.

(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 all encumbrances.

Members of Officers of Government 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.

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.

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

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 to 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.

19. Except in cases (if any) in which these presents 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 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.

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 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 one 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 the 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 think fit several awards instead of one 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 in absence of parties

(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

Property to be transferred free from incumbrances

(ii) All and every the demised premises, assets and property purchased by the Government and shall be conveyed, transferred or delivered to the Government in 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 Government

17. 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 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 to 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.

Force majeure

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 any 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 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.

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 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 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 *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 in absence of parties

(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

Marginal notes

21. The marginal notes hereto are for the sake of convenience only and shall not affect the interpretation or construction of these presents.

In Witness whereof one of the Crown Agents has hereunto set his hand and seal and the Lessees have caused their common seal to be hereunto affixed the day and year first above written.

Signed Sealed and Delivered by Sir  
Henry Charles Miller Lambert  
one of the Crown Agents for the  
Colonies in the presence of

HENRY LAMBERT

W A F WICKHART

*Crown Agents Office*

The Common Seal of the Magadi  
Soda Company Limited was hereunto  
affixed in the presence of

J G NICHOLESON, Director

A E GAWLER Secretary



Marginal notes

21. The marginal notes hereto are for the sake of convenience only and shall not affect the interpretation or construction of these presents.

In Witness whereof the Crown Agents has hereunto set his hand and seal and the Lessees have caused their common seal to be hereunto affixed the day and year first above written.

Signed Sealed and Delivered by Sir  
Henry Charles Miller Lambert  
one of the Crown Agents for the  
Colonies in the presence of

HENRY LAMBERT.

W A WICKHART  
Crown Agents Office

The Common Seal of the Magadi  
Soda Company Limited was hereunto  
affixed in the presence of

J G NICHOLSON, Director

A E GAWLER, Secretary

Kenya  
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KENYA COLONY AND PROTECTORATE.

---

Lease

OF

RAILWAY TO LAKE MAGADI.

---

DATED 20TH MARCH, 1923.

---

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

93  
KENYA COLONY AND PROTECTORATE.

---

Lease

OF  
RAILWAY TO LAKE MAGADI.

---

DATED 20TH MARCH, 1905

---

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

193  
KENYA COLONY AND PROTECTORATE.

---

Lease

OF

RAILWAY TO LAKE MAGADI.

---

DATED 20TH MARCH, 1928

---

HUTTON, 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, Esquire, 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 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 power 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 50/54 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) 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 37 G. & H. together with the Railway running there-through and being thereon which said 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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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 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 MAGADISODA 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 50/54 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) 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 or less that is to say Land Office Number 2341 of Meridional District South A 37 G. & H. together with the Railway running there-through and being thereon which said piece of land and railway with the dimensions abutments and boundaries thereof is delineated on the plan drawn on these presents and more



particularly on Land Survey Plan Number 22640 deposited in the Land  
Registry Office at Nairobi. Excepting nevertheless out of the grant  
by made and reserving unto the Governor as is more particularly  
of 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

[SIGNED CLERK]

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## 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 60/64 Broadway in the City  
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

Witness by an Indenture (hereinafter called "the Magadi Lease of 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 to hereas for the purpose of working the said deposits the  
Lessees of 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 to hereas by an Indenture (hereinafter called "the Part Lease  
Part Lease") already prepared and engrossed and intended to bear  
even date with and to be executed immediately after these presents and

particularly on Land Survey Plan Number 22640 deposited in the Land Surveys Office at Nairobi. Accepting nevertheless out of the grant hereby made and reserving to 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)

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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 60/64 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

Whereas by an Indenture (hereinafter called "the Magadi Lease") bearing date with and executed before the Lessees 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 of 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 witnessed 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 of the Colony 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 Mand Province of the Colony containing by admeasurement 2,000 acres more or less that is to say L.O. No. 2311 of Merical District South A 37 together with the railway running therealong 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. 2340 deposited in the Land Survey Office at Nairobi.

Together with full and free right and liberty for the Lessees to reconstruct 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 other

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

Excepting

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 treasures antiquities and other similar things lying in on or under the demised premises other than carbonates 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 acres 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 impediment 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 done 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 right and liberties last aforesaid shall be exercised in such a manner as not to interfere with the efficient working of the Railway.

As to the right of way

(iii) Full and free right and liberty for the Government in any case of State urgency and 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 exist 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.

3. If the Magadi Lease shall be determined in any manner whatsoever then this lease shall terminate and be subject to the provisions of clause 16 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 terminates

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:—

Lease to Government

(a) The Lessees will pay the rent hereinafter reserved at the times and in the manner aforesaid.

(b) 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:—

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

(i) 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

No preference given to Lessees

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

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

Lessees to 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 of 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-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 ~~weight~~ in each of the years ending on the 31st day of October 1927, 1928, 1929, 1930 and 1931 despatched by railway not less than 50,000 tons of Soda Goods and in the year ending on the 31st day of October and every subsequent year ending on the 1st 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 20 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 ~~them~~ permitted 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 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.

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 Mogadi 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 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.

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 premises the Lessees shall forthwith give notice thereof to the Government and take all reasonable steps for the safe preservation thereof.

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 the Lessees shall at any time thereafter upon the request in writing of the Government forthwith surrender the same to the Government.

Any dispute shall arise as to whether any land is or is not necessary for the immediate or prospective purposes of the Railway such difference shall be referred to arbitration under the provisions in that behalf hereinafter contained.

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.

(x) 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.

Not to interfere with public or private rights

(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 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.

To indemnify Government against claims

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

Contractors to be at office

(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 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.

No arms or ammunition to be sold to natives

(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.

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

(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

As to liability of Lessees to special sanitary measures

upon or in the neighbourhood of the Railway 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.

Native labour

(xvi) 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.

To surrender in exchange for new Lease when Government survey made

(xvii) (A) If and when the demised lands shall have been surveyed by or on behalf of the Government the Lessees shall at any time thereafter upon the request in writing of the Crown Agents or the Government forthwith surrender this Lease and accept in exchange therefor a new Lease containing a proper description of the property as ascertained by such survey.

(B) The new Lease shall be for the residue then unexpired of the term hereby granted and shall contain *mutatis mutandis* the same terms and provisions in all respects as this Lease.

(C) The Lessees will pay the costs of the Crown Agents and the Government of and incidental to the preparation and execution of the Surrender and new Lease.

(D) The Surrender shall be and shall be expressed to be without prejudice to any right of action or remedy which may have accrued to the Crown Agents or the Government in respect of antecedent breach by the Lessees of any of the covenants or provisions herein contained.

Maintenance

5. (i) The High Commissioner for Transport shall at his own expense maintain the Railway so completed and equipped as aforesaid and keep the same in working order.

(ii) Nothing in this Lease contained shall impose or be deemed or construed to impose any liability upon the Crown Agents or the Government or the High Commissioner for Transport to fit equip or maintain the Railway so as to be capable of carrying more than 100,000 tons of soda goods in any one year.

Extraordinary repairs

6. The Lessees shall at their own cost make all such additions to and betterments of the Railway as may be necessary for the accommodation of their traffic. In the event of any difference of opinion as to the necessity for any such additions or betterments the matter shall be referred to arbitration under the provisions in that behalf hereinafter contained.

7. (i) The High Commissioner for Transport shall provide, and maintain all locomotives and rolling stock necessary for the efficient working of the Railway.

(ii) The High Commissioner for Transport shall not be bound to provide tank cars or any special wagons or conveniences for the carriage of liquid fuel and the Lessees shall at their own expense provide such tank cars special wagons and conveniences (if any) as the Lessees shall from time to time deem necessary or proper for the carriage of the Lessees' liquid fuel. Provided nevertheless that the Lessees shall not be entitled to any special reduction of freight on liquid fuel over and above that allowed to any other traders providing their own cars by reason of the provision of any cars provided by the Lessees.

8. The High Commissioner for Transport shall carry all soda goods in trucks properly protected from the weather and from dirt.

9. The service of loading and unloading the Lessees' goods at the respective places of departure and destination shall in all cases be performed by and at the sole expense of the Lessees but the service (if any) of loading and unloading at any intermediate place shall in all cases be performed by and at the sole cost of the High Commissioner for Transport.

10. The rates of freight for soda goods consigned by the Lessees direct from Lake Magadi or any other point on the Railway to the Magadi Pier and Depot Works by the Railway to Magadi Junction and thence over the Uganda Railway shall be as follows:

(a) For the purpose of this clause each year shall begin on the 1st day of October.

(b) In each year during the first period of five years and thereafter until the rates shall be increased as hereinafter provided the rate shall amounting to the total weight of soda goods carried be as follows:

These rates shall be subject to a 25% increase in 1910 if such increase is approved by the Government and the rates shall be subject to a further 25% increase in 1915 if such increase is approved by the Government and the rates shall be subject to a further 25% increase in 1920 if such increase is approved by the Government.

TOTAL WEIGHT CARRIED

Not exceeding 50,000 tons	12 15 00
Exceeding 50,000 tons but not exceeding 100,000 tons	17 00
Exceeding 100,000 tons	18 50

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 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 rate 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 the award is made.
- (ix) An increased rate shall continue in force for the period of five years to which it relates and thereafter until again increased 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 hereinafter 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.

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 trucks 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 adding any compensation for subject to the provisions of Clause 14 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 Lessees' <sup>For quiet enjoyment</sup> ~~Government~~ 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.

(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. <sup>For acts done by the High Commissioner for Transport</sup>

(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 <sup>Lessees to have first refusal of all land on railway</sup> 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.

16. <sup>Proviso for tenancy</sup> 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

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 by 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 notice in writing in that behalf such notice to be given within the 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. (i) 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

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

Option to the Government to purchase on sooner determination

Option to the 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 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 £509,582 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 1920 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

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 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 or any other rights of the Crown Agents or the Government under 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 of officers of Government not to be personally liable

26. No member or officer of the Government or the Crown Agents shall be in anywise held 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.

Signature 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 to Lessee

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 acts in question arise 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* caused by 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. 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 of 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 join 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 in the case may be shall be final and without appeal and binding upon all parties. If either party to any dispute, difference or question makes 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 a sole arbitrator.

Arbitrator may make partial awards

(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.

May proceed or parts

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

May inspect books and accounts and examine witnesses on oath

(iv) The arbitrator and umpire shall have full power to inspect the books documents and accounts of both parties to the reference or either of them and to examine on oath or affirmation or on statutory declaration if two of each the officers agents servants and witnesses of the parties respectively.

And arbitrator may

(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.

Marginal notes

3. The marginal notes hereto are for the sake of convenience only and shall not affect the interpretation of construction of these provisions.

In witness whereof one of the Crown Agents has hereunto ~~signed~~ ~~and~~ ~~and~~ the honours have caused their common seal to be hereunto affixed the day and year first above written.

Signed and Delivered by me  
Henry James Maitland  
one of the Crown Agents for the  
Colonies of the Admiralty

HENRY LAURENCE

W. E. HART

Crown Agents Office

The Common Seal of the Magadii Soda Company Limited was hereunto affixed in the presence of

J. G. ...

A. R. ...

reference and his award shall be final and binding upon all parties and all the provisions hereinafter contained with reference to the proceedings of two arbitrators and an umpire shall mutatis mutandis be applicable to such sole arbitrator.

Arbitrators may make partial awards

(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.

May proceed ex parte

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

May inspect books and accounts and examine on oath

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

And provide for costs

(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.

Marginal notes

31. The marginal notes hereto are for the sake of convenience only and shall not affect the interpretation or construction of these presents.

In witness whereof one of the Crown Agents has hereunto set his hand and seal and the Lessees have caused their common seal to be hereunto affixed the day and year first above written.

Signed Sealed and Delivered by Sir Henry Charles Miller Lambert one of the Crown Agents for the Colonies in the presence of

HENRY LAMBERT

W. A. E. WILKINSON

Crown Agents Office

The Common Seal of the Magadii Soda Company Limited was hereto affixed in the presence of

J. G. NICHOLSON, Director

A. E. GAWLER, Secretary