

1924

KENYA

C. O.
45739

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DATE

25th September 1924.

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ON, OSMANNEY and
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Previous Paper

50546 B

Tel. Gov. 4th Nov 1924
50902/24
30 SEP 1924

Subsequent Paper

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47752

MAGADI SODA CO. RECONSTRUCTION.

Fwd'd three prints each of two drafts of new leases of Lake Magadi and the Railway to Lake Magadi. Comments on provisions of various clauses.

MINUTES

1. Send two copies of each to Gov., with copy of covering letter. Say that the drafts have not yet been considered here but that it is desired to lose no time in communicating them to the Gov. for his views.

2. Ask 3/4 for three more copies of each. Then write.

W.L.S. 19 9 24

In the absence of W. P. Seel, Mr. Seel and I have been through the drafts and have compared them as far as may be with the previous Instrument, particularly the lease of the Lake of 1911, ~~which~~ agreed, but not executed, Railway lease of March 1923; and the Memorandum of agreement with Messrs. Brunner Mond this year as modified by consent in 26898/24. Allowing for the difficulty ^{arising} of circumstances the changes of form are not extensive and are largely accounted for by the grouping of covenants under single headings and the avoidance of various complicated pieces of drafting. A note on certain points of detail is attached, but attention may be drawn specially to the following points, which largely arise out of the Solicitors' covering letter.

(a) The Solicitors draw attention to their omission of the provision, in Clause 7 of the Memorandum, for the Co. to pay railway freight and royalty on certain specific amounts whether they actually turn out this quantity or not. This provision is an essential part of our dealing with Messrs. Brunner Mond, and it is unfortunate that the Solicitors have left it out without reference to us.

This was our main safeguard against the property not being worked, and it is not sufficient protection that (as the Solicitors suggest) the Crown Agents would be able to lay down the terms on which they would waive a breach of covenant. *Note the numerous allegations*

The Solicitors must be instructed to vary the drafts so as to include this provision

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and the Governor must be informed by telegram that this is being done. Messrs. Brunner Mond and Co. must also be so informed when the time comes communicating the drafts to them.

(b) Having themselves cut out the provision for absolutely certain payments to the Government, the Solicitors proceed to point out that we have made no provision for a minimum payment on account of royalty. If they are instructed as I propose under (a) they can at the same time be informed that the Secretary of State sees no necessity, in addition, for providing a minimum ~~on~~ royalty.

(c) "Governor's day". We now have the recommendation of the Governor and the General Manager that the year which should apply to the Company's obligation to produce a certain amount should be taken to end on the 31st October. This gives us the means of avoiding reference to a "Governor's day", and the only point is as to the exact definition of the date and its relation to the term of the lease. The lease is to run from the date of reconstruction of the Co. and this, we may be sure, will not be before the 31st October, 1924, but we may be almost as confident that, if the scheme of reconstruction is approved by the Court, it will be earlier than the 31st October, 1925. I suggest (subject to the power of redrafting if the reconstruction is inordinately delayed) that the lease should run from the date of reconstruction up to the expiration of 98 years from the 31st October, 1925, and that the first period of five years (which governs the latter periods throughout) should be defined as a period of four years from

that

31.10.25

that same date; that would mean certain consequential alterations, for example, in 5 (V) (A) of the Lake lease where the third, fourth and fifth years are referred to.

The further question ~~is~~ ^{is} whether the periods of account (ending ~~June~~ and December) should not also be altered so as to end in October and April. I think this alteration will be desirable, as otherwise the books have to be made up separately in regard to actual amount of output and the royalties due on output.

(d) I am confident that there is no need to provide in Clause 5 of the Railway lease (as the Solicitors have done) that the lessees shall equip the branch railway to carry 160,000 tons a year. This has been done long ago, but we had better have the Governor's confirmation that ~~the~~ stipulation is unnecessary.

(e) The next point in the letter from the Solicitors relates to the provision that the Government shall, in respect of the capital cost of the branch ~~to the~~ railway, be credited with what we are letting off the Co. in the way of freight ~~weight~~ and royalty as compared with the previous provision for a freight ^{rate} ~~weight~~ of 9 ^{per ton} of 1d per ton mile plus corresponding royalty. As regards the periods after the first five years, the Solicitors are right in saying that if the royalty, as it would have been, is the same as the royalty as it will be, ^{royalty} ~~there~~ does not appear ~~any~~ ^{is the} difference. But, as regards the first five years when there will be a compounded payment in respect of freight and royalty the position is different. If the compounded rate be regarded as separated into a freight rate, ^{and} ~~plus~~ royalty on the basis previously

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previously due, then we may regard the royalty as being cut out, but the freight rate must in that case be regarded as reduced and therefore the deficiency of that freight ^{rate} ~~weight~~ under the ~~old~~ ^{5d} rate is increased. Regarding it from the point of view of the Solicitors' drafts, in which no royalty is payable during the first five years and the whole of the compounded rate is regarded as freight, the fallacy of their view that royalty cancels out is even more apparent, as it appears in the first term ~~inserted in the~~ ~~from~~ the second term of the subtraction sum.

On this point also the Solicitors must, I am afraid be told to revise their draft.

(f) Their next point (namely, that it would be simpler to have the rate on the first 50,000 tons so much, with a higher rate on the excess over that amount) is out of date. We have been proceeding both with the old Co. and with their potential successors on the basis of fixed rates per ton according to the actual amount ^{carried} of carrying and I am not prepared to advise that we should delay a settlement by re-opening this question. The fact that the arrangement made means that at the point of change (e.g. at 50,000) the railway carries additional soda without getting additional freight for it has been realised, and the provision that at these points the amount payable in freight shall not be less than so much, was definitely put in so as to avoid the Government actually receiving less on the larger amount carried. In this matter we have been meeting the other side and not evolving a perfect scheme.

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lease as being the capital expenditure on the railway up to date. ^{We} ~~You~~ can put this to Messrs. Brunner Mond and Co., but it will probably need a good deal of discussion (which we can leave to the Crown Agents) to ascertain the exact amount.

(g) I think it is fully agreed with Messrs. Brunner Mond and Co. that we cannot promise them any immunity from the regular customs duties, though the Solicitors are right in pointing out the ambiguity of D (6) of the Memorandum in which it is said that there could be no special concessions other than those in the existing Magadi Railway Lease. Those concessions mainly or entirely refer to the special duty on coal (which has definitely been dropped) and the exemption from customs duty of material for construction of the railway, which is out of date. On this point the draft should stand until we see whether Messrs. Brunner Mond and Co. will take any exception to it.

(h) The Solicitors are right in holding that the Lake lease and the Railway lease should not each provide for the lessees having the first refusal of land on each side of the railway. There is room for difference of opinion whether the privilege would be more suitably accorded to the lessees of the railway (who may require the land for sidings, etc.) or to the lessees of the Lake (for whose purposes the sidings etc. would be required). I am prepared to leave the privilege to the Lake lessees as is done in these drafts.

(i) We can leave to the Governor the Solicitors' final point that the General Manager's statement of the cost of working should be for a period

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(i) We can leave to the Governor the Solicitors' final point that the General Manager's statement of the cost of working should be for a period

period expiring six clear months before the date
of the revision of rates which the statement is
intended to govern. I think their view is sound
if there is no inconvenience.

1063 10-10-24

LAKE LEASE

Introduction. The address of the new Company will not necessarily be that in the draft.

Clause 2, end of first paragraph. The old Company had with approval acquired the control of water other than that of the Guaso Nyiro. The rights so acquired must be continued to the new Company, and we had better ask the Governor to suggest words for covering this point.

Clause 2 (1) The exception of minerals other than soda from the terms of the lease is agreed with the promoters. At the end of these Sub-Clauses the provision that the Government will not be responsible for subsidence should appeal to Messrs. Brunner Mond and Co. who know all about subsidences from their Cheshire experiences.

The following ^{the} exceptions follow on the exception of other minerals.

Clause 2 last paragraph ("Term"). As to this see covering minute.

Clause 3. If my proposal as to ~~the~~ "Government's day" is adopted, we had better have an initial proportionate payment of rent for the first period up to the 31st October, 1925, subsequent payments being due on the 1st November each year.

Clause 4 (1) as to "Governor's day", see covering minute.

(ii) As to the months in which payments should be due, see also covering minute.

(iv) The provision that there should be no export duty on products on which royalty has been paid is in form a deduction from the powers

of the Legislature. There are no export duties at present, however, and I think the irregularity can be overlooked. If not, it will be necessary to provide that the Government will set off amounts receiving royalty against amounts due in respect of export duty, but the matter would give rise to much trouble with the promoters that I hope we may leave the provision as it stands.

Clause 5 (iv). I do not much like instructing the lessees to work the deposit until it is exhausted. So far as can humanly be foreseen the deposit will increase more rapidly than it can be worked, and the provision might be used in the time of our remote successors as justifying application for the renewal of the lease. There may be nothing in this, but if there is anything in it, we can avoid it by saying "until the expiration or sooner termination of the lease, or until the whole of the deposits are worked out".

Clause 5 (v), (F). The Memorandum is not clear on one point, namely, if, for example, the Co. is liable to produce 50,000 tons in one year and 50,000 in the next year, and actually produces only 45,000 in the first year, its liability in the second year (supposing the deficiency of 5,000 is worked off in the first three months) is ^{altogether} together 50,000 tons or 55,000 tons. I assume the latter, but if there is any room for ambiguity in the wording of the draft lease it should be removed.

Clause 5 (vi). The provision against waste seems to be new. It is worth putting in as a precaution, but it will be extremely difficult to check any waste.

Clause 5 (xi). See what I have said on

Clause

Clause 4 (iv).

Clause 6 (xvi). It will be well to insert the word "raw" before "soda" in this Sub-Clause. The word "soda" by itself has a special defined meaning.

Clause 9. At the end of the first (very long) sentence my non-legal mind is offended by the extreme inversion of language, especially the misplacing of the words "to re-enter". Cannot this be avoided.

Clause 13. There seems some duplication between this and Clause 12.

Clause 14. The ejusdem generis provision near the bottom of the page is new in this draft, but has been agreed with Messrs. Brunner Mond.

RAILWAY LEASE

Introduction. The address of the new Company is uncertain.

Preamble. The date will be that of reconstruction - see note on Lake lease.

Clause 1 (L). See note on Lake lease as to "Governor's day".

Clause 2 (iv). The 1923 lease had the words "over the railway or to the port". When we get the Port lease from the Colony we must make sure that corresponding provision is made there or that it is unnecessary.

Clause 4. The provisions as to the railway being worked entirely as a branch of the Uganda Railway, and the Co. having no special priority of traffic have been settled with the promoters

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promoters. They have involved several changes in the form of the lease.

Clause 5 (1) See covering minute and the Solicitors letter.

Clause 8 (11). This provides that the Uganda Railway shall not be compelled to equip the line so as to be capable of carrying more than 160,000 tons of soda annually. There is no provision that the Uganda Railway shall not be liable to carry more than 160,000 tons a year, but I think this is unnecessary in view of the general provision of Clause 4 (B).

Clause 8 (11). Clause 20 of the 1923 lease provided that the Co. should not, on the ground of their providing the tanks for carrying liquid fuel, be entitled to a specially low rate of freight. This is omitted from the present lease and is a matter for legal opinion whether the omission is safe.

Clause 11. As to "Governor's day" and the Solicitors' two eccentricities on this Clause, see covering minute.

As to Sub-clause (B) if my proposals for the beginning of the term and as regards "Governor's day" are accepted the provision as to an excess of the initial period over ~~the~~ the whole year is not likely to arise, but if it stands the drafting may require reconsideration, as it appears to me that the amount carried in that excess period must govern the rate per ton as well as the minimum earlier payment.

Clause 11 Sub-Clause (C). The Solicitors have drafted the greater part of this Clause on the assumption that rates will always be increased and have confined the possibility of a decrease to Sub-Clause (C)(x). This is not sufficient, as the Co. might

might have just as much to say about the adequacy of a reduction as about the legitimacy of an increase. ~~I do not myself see why,~~ In addition, we cannot expect the Co. to be pleased with the provision that an increase shall last five years while a decrease shall be terminable at will. I do not see why ⁱⁿ the whole of Sub-Clause (C) we should not use the word "revise" or "revision" instead of "increase".

On the same Sub-Clause (C) it will be observed that the Memorandum contained a special foot-note as to the meaning of the "minimum yearly payments" in this connection. Under (A) we are dealing with "absolute rates, and the minimum yearly rate corresponding to them". Under (C) we are dealing with ^{Maximum} ~~minimum~~ rates, and it would be improper if e.g., the actual rate per ton were 18/- for a quantity exceeding 50,000 tons, that the "minimum yearly payment" should be £15,000, which is appropriate to a rate of 20/-. The Solicitors miss this point altogether and an explanation must be inserted.

With regard to Sub-Clauses (v) et seq. of (C), these seem to be the natural corollary of the arrangements agreed upon. We can leave the Governor to object if he wishes.

Clause 18. The provision that at the expiration of the full term of 99 years the railway shall lapse to the Government is agreed with the promoters and so is the provision in Clause 21 as to the reduction of the capital value of the railway by a deficiency of freight ⁱⁿ regard to which see my covering minute.

Clause 23. In view of the repetition

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SUTTON, OSMANNEY & OLIVER

E. S. OLIVER

H. M. OSMANNEY

TELEGRAPHIC ADDRESSES: "OSMANNEY, LONDON"

TELEPHONES: NO 1289 } LONDON WALL.
NO 9318 }

C. O.
45739
27 SEP 24

3 & 4, GREAT WINCHESTER STREET,

LONDON, E.C.2.

285

30/9/24

24 September, 1924.

44097/1924.

Sir,

Magadi Seda Company Limited.

We beg to hand you herewith three prints each of two drafts of new leases of Lake Magadi and the Railway to Lake Magadi prepared in accordance with your instructions.

The ground should be cleared for the new leases before they are actually granted. At present the old leases, though subject to forfeiture, are still on foot. We think these should be surrendered by the liquidator of the old company with the concurrence of the debenture holders and deeds executed to this effect.

We have taken the opportunity of recasting the leases and cutting out the dead wood.

In the Lease of Lake Magadi:-

We have, as a suggestion, omitted the provision in clause 7 of the memorandum accompanying your letter of 30th May, 1924 as to "defaults" (the last sentence of the c'
The Crown Agents can always waive a breach of covenant

C. O.
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27 SEP 24

SUTTONS, CHAMBERLAIN & OLIVER,
E. C. OLIVER,
M. N. CHAMBERLAIN,
TELEGRAPHIC ADDRESS: "THE AGENTS" LONDON.
TELEGRAMS: BY 1222 LONDON WALL.
BY 1222 LONDON WALL.

3 & 4, GREAT WINCHESTER STREET,

LONDON, E. C. 2.

205

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if they desire to do so, and we think, therefore, that the insertion of an express provision is unnecessary and might cause confusion.

There is no provision for a minimum royalty. There are provisions for getting and despatching by rail which make royalty payable by way of freight during the first five years, and also provisions for exporting etc. after the first five years, which again make royalty payable, but the remedy is by way of breach of covenant and this is avoided if there is a minimum royalty payable by way of rent after the first five years. We suggest, therefore, for consideration, that there might be a minimum yearly royalty of say £12,500 payable after the first five years.

With regard to both Leases:

Would it not be possible to dispense with the provisions as to the commencement of the period of five years which we have defined as "Governor's day"? Could not this day be fixed beforehand so that the lease and the period of five years may both commence on the same fixed day?

With regard to the Lease of the Railway:

We understand that the line has been completed, but

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we have provided in clause five that the lessees shall fit it to carry 160,000 tons of their products in a year as this may not have been done.

In clause 7 (f) of the memorandum of 30th May 1924 the royalty seems to cancel out in both places and we have, therefore, omitted it in the new clause 21.

In clause 11 of our draft as to rates of freight it would seem to be simpler to provide that the rate on the first 50,000 tons should be so much and after the first 50,000 tons so much less, and again after 150,000 tons so much less.

Under the present arrangements the lessees having paid for 50,000 would be entitled to have roughly 3,000 tons carried free and again to have roughly 4,500 tons carried free when they have paid for 150,000 tons. This would not seem to have been the intention.

In clause 12 as to price it seems to us that the capital outlay should be ascertained so that a right figure can be inserted to the date of the lease.

We have omitted all provisions for freedom from import duty. The memorandum clause 7 (h) seems to imply

we have provided in clause five that the lessees shall fit it to carry 160,000 tons of their products in a year as this may not have been done.

In clause 7 (f) of the memorandum of 30th May 1924 the royalty seems to cancel out in both places and we have, therefore, omitted it in the new clause 21.

In clause 11 of our draft as to rates of freight it would seem to be simpler to provide that the rate on the first 50,000 tons should be so much and after the first 50,000 tons so much less, and again after 150,000 tons so much less. Under the present arrangements the lessees having paid for 50,000 would be entitled to have roughly 3,000 tons carried free and again to have roughly 4,500 tons carried free when they have paid for 150,000 tons. This would not seem to have been the intention.

In clause 21 as to price it seems to us that the capital outlay should be ascertained so that a nett figure can be inserted to the date of the lease.

We have omitted all provisions for freedom from import duty. The memorandum clause 7 (h) seems to imply

that there should be no such issue, although clause 6 of the conditions at the end of the Memorandum seems to point the other way.

We have omitted the provisions for giving the lessees a first refusal of land within a quarter of a mile of the Railway as this is already contained in the lease of Lake Nagadi. We do not think that two first refusals should be given, even to the same party, as the two leases might come into different hands.

In clause 11 (c) (iv) of the new draft we have altered the statement of cost to the first six months of the final year. This seems desirable as such a statement would take time to get out and if it were to cover the final six months of the year one might be well into the next period of five years before the rates were finally settled.

We have the honour to be

Sir,

Your obedient servants,

P. H. S.

The Under Secretary of State,
Colonial Office.

that there should be no such immunity, although clause of the conditions at the end of the memorandum seems to point the other way.

We have omitted the provisions for giving the lessees a first refusal of land within a quarter of a mile of the Railway as this is already contained in the lease of Lake Nagadi. We do not think that two first refusals should be given, even to the same party, as the two leases might come into different hands.

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We have the honour to be

Sir,

Your obedient servants,

Putt

The Under Secretary of State,
Colonial Office.

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26.9.24

289

KENYA COLONY AND PROTECTORATE.

Lease

OF

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

DATED

192

SUTTON, OSMANNEY & OLIVER,

103 & 4 Great Winchester Street,

London, E.C.2

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KENYA COLONY AND PROTECTORATE

This Indenture made the _____ day of _____ 192

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 Nos. 25 and 27 Bishopsgate in the City of London (hereinafter referred to as "the Lessees" which expression shall where the context so admits include their successors and assigns) of the other part.

Whereas the Lessees are desirous of working certain deposits of carbonate 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 of _____ subject to the provisions and conditions hereinafter appearing:

Now this Indenture witnesseth as follows that is to

1. In these presents the following expressions or terms shall have the following meanings respectively:
- (A) "The Colony" means Kenya Colony and Protectorate. "The Colony"
 - (B) "The Government" means the Government for the time being of the Colony. "The Government"
 - (C) "The Governor" means the Governor for the time being of the Colony or the person for the time being acting as such. "The Governor"
 - (D) "The Magadi Soda Deposit" means the deposits of carbonate of soda included in the demise hereby made. "The Magadi Soda Deposit"
 - (E) "Raw Soda" means carbonate of soda or carbonate of soda mixed with any other salts as obtained from the Magadi Soda Deposit before calcination whether loose or packed. "Raw Soda"
 - (F) "Soda" means soda ash, carbonate of soda ^{and} _{or} other salts of soda as obtained from raw soda as above defined and whether loose or packed. "Soda"

KENYA COLONY AND PROTECTORATE.

This Indenture made the _____ day of _____ 192__

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 Nos. 25 and 27 Bishopsgate in the City of London (hereinafter referred to as "the Lessees" which expression shall where the context so admits include their successors and assigns) of the other part.

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

Now this Indenture witnesseth as follows that is to

1. In these presents the following expressions or terms shall have the following meanings respectively:
- (A) "The Colony" means Kenya Colony and Protectorate.
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 - (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 included in the demise hereby made.
 - (E) "Raw Soda" means carbonate of soda ^{and} carbonate of soda mixed with any other salts as obtained from the Magadi Soda Deposit before calcination whether loose or packed.
 - (F) "Soda" means soda ash, carbonate of soda ^{and} other salts of soda as obtained from raw soda as above defined and whether loose or packed.

"Soda Products"

(c) "Soda Products" means soda crystals, caustic soda, bicarbonate of soda or any other commodities or preparations which are recognised as soda products in the chemical industry and whether loose or packed.

"Manufactured Soda"

(d) "Manufactured Soda" means manufactured articles or merchandise of which soda or soda products form the essential or main constituents and whether loose or packed.

"Governor's Day"

(e) "Governor's Day" means such day after the date of the incorporation of the Lessees as the Governor shall fix for the commencement of the period of five years mentioned in Clause 4 and elsewhere in these presents.

"Month"

(f) "Month" means calendar month.

Demise

2. The Crown Agents for and on behalf of the Government in consideration of the rent and royalties hereinafter reserved and the covenants and conditions on the part of the Lessees to be observed and performed hereinafter contained hereby grant and demise unto the Lessees First all that rectangular piece of land forming part of the Colony and known as Lake Magadi together with all or any the deposits of carbonate of soda therein which piece of land is situate as near as can be ascertained between latitude 1° 40' and 2° 5' South and extends from longitude 36° 10' East to longitude 36° 20' East and is delineated on the map attached to these presents and thereon surrounded by a red line Together with the land on the shores of such lake necessary for working the said deposit as shown on the said Plan which premises together include an area of approximately 306 square miles And secondly a that triangular piece of land forming part of the Colony and situate near the Northerly end of the Natron Lake which piece of land includes an area of approximately 18 square miles and lies as near as can be ascertained to the Southward of latitude 2° 5' South and between longitude 36° and 36° 5' East and is delineated on the said plan and thereon also surrounded with a red line Together with full free and uninterrupted right for the Lessees their officers servants and workmen to search to 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 or 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' operation 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 fully exploring winning working treating raising stocking dressing converting manufacturing transporting or otherwise disposing of the Magadi Soda Deposit.

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

- (i) All mines minerals and mineral substances including precious stones and all coins treasure relics antiquities and other 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 to 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 Crown Agents of the Government or their Lessees or any person authorised by them shall require to be left for the support of any building now or hereafter to be erected on the demised lands.
- (iii) So much of the Magadi Soda Deposit as the Crown Agents of the Government or their Lessees or any person authorised by them shall remove or deem advisable to leave in boring or sinking to or working the excepted minerals.
- (iv) So much of the Magadi Soda Deposit as the Crown Agents or the Government or their Lessees or any person authorised by them shall require to be left as a support for any pit or shaft which may hereafter be sunk to the excepted minerals.
- (v) So much of the Magadi Soda Deposit as the natives may remove for their own purposes in the exercise of any native right.

for the working of the Magadi Soda Deposit and to construct any works ships buildings stores appliances reservoirs water-races roads tramways railways canals and other means of transport in upon over and under the demised lands as they may deem necessary or convenient for effectually exploring winning working treating raising stocking dressing converting manufacturing transporting or otherwise disposing of the Magadi Soda Deposit.

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- (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 to 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 water-courses 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 Crown Agents or the Government or their Lessees or any person authorised by them shall require to be left for the support of any building now or hereafter to be erected on the demised lands.
- (iii) So much of the Magadi Soda Deposit as the Crown Agents or the Government or their Lessees or any person authorised by them shall remove or deem advisable to leave in boring for sinking to or working the excepted minerals.
- (iv) So much of the Magadi Soda Deposit as the Crown Agents or the Government or their Lessees or any person authorised by them shall require to be left as a support for any pit or shaft which may hereafter be sunk to the excepted minerals.
- (v) So much of the Magadi Soda Deposit as the natives may remove for their own purposes in the exercise of any native right.

delivered or used for commercial purposes within the Colony during the six months ending on the 31st day of December or the 30th of June as the case may be preceding the day appointed for pay 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) If the said period of five years shall not expire on a 31st day of December or a 30th day of June then the first payment shall be in respect of the period from the expiration of the said period of five years to the next 31st day of December or 30th day of June whichever shall first happen after the expiration of the said period of five years

(iv) Raw soda soda soda products and soda contained in manufactured soda on which royalty has been paid by the Lessees shall not be hable 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 Lessee's Covenant
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 June and the 31st day of December 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 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 render accounts

delivered or used for commercial purposes within the Colony during the six months ending on the 31st day of December or the 30th day of June 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.

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

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

(i) The Lessees will pay the rent and royalties herebefore reserved and made payable at the times and in the manner aforesaid. To pay the said 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 June and the 31st day of December 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 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 render an account

To work

(iv) The Lessees will forthwith commence and thereafter vigorously continue to work the Magadi Soda Deposit in a skilful and workmanlike manner to the full extent and to the best economic capacity and to get win and carry away the Magadi Soda Deposit in accordance with the provisions of these presents fairly and properly and according to the best and most approved method of working deposits of carbonate of soda until the whole of the Magadi Soda Deposit (except such parts thereof as shall be required by the Crown Agents or the Government or their lessees or any person authorised by them to be left unworked for the purposes of support or which for any other reason it shall not be incumbent on the Lessees to get and which they shall under these presents permanently leave ungot) shall be worked out.

Yearly minimum workings

(v) (A) Without prejudice to or in any way limiting the covenant by the Lessees lastly hereinbefore contained the Lessees will in each of the third fourth and fifth years from and after Governor's Day get and despatch by Railway not less than 50,000 tons of raw soda and soda products and in the sixth and every subsequent year from and after Governor's Day during the term hereby granted the Lessees will export or sell and deliver or use for commercial purposes within the Colony raw soda, soda or soda products or soda contained in manufactured soda as follows: In each of the sixth and seventh years from and after Governor's Day not less than 75,000 tons and in the eighth and every subsequent year not less than 100,000 tons.

Average

(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 no excess of tonnage of any preceding year shall be allowed towards making up a deficiency in any subsequent year.

To pay for soda lost or wasted

(vi) The Lessees will in case of any waste or unnecessary loss of raw soda by or through any mismanagement or default of the Lessees pay for the raw soda so wasted or lost as if the same had been actually got and exported.

To leave soda unworked for support

(vii) The Lessees will leave such quantities of the Magadi Soda Deposit unworked and in such positions for the support of any building now or hereafter to be erected on the demised lands or of any pit or shaft hereafter to be sunk to the excepted minerals as the Crown Agents or the Government or their

Lessees or any person authorised by them may reasonably and properly require.

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

Not to obstruct working of demised minerals

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

To keep works in repair

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

To permit entry and view

(xi) 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 or manufactured soda.

To comply with Ordinances

(xii) 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

Not to interfere with public or private rights

Lessees or any person authorised by them may reasonably and properly require.

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

Not to obstruct working of excepted minerals

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

To keep works in repair

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

To permit access and view

(xi) 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 or manufactured soda.

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Not to interfere with public or private rights

for the prevention of damage or injury to any property or person or for the due preservation or maintenance of any public or private right or property.

To indemnify Government against claims

(xiii) 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 works or the use of any plant engines or other appliances in connection therewith and if the Government shall make any payment in respect of such damages claims or losses then and in every such case the Lessees shall repay to the Government on demand the amount of the money so paid and of the costs incurred therein by the Government 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 or authority for the time being and from time to time working or managing the Uganda Railway unless the same shall have arisen from some neglect or default of the Lessees.

Office to be provided for service of notices

(xiv) 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.

No arms or ammunition to be sold to natives

(xv) 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.

Native rights

(xvi) The Lessees shall not in any way infringe or interfere with the rights of natives and particularly any native rights of hunting or fishing taking water timber or firewood or collecting or removing soda from the demised premises for their own purposes.

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

(xvii) 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.

(xviii) 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

(xix) The Lessees shall provide at or near the site of their works such huts or other accommodation for the use of the native labourers or workmen employed in the Lessees' works and also such hospitals medical officers and attendants medicines and medical stores for the like use as may be necessary.

Huts or other accommodation hospitals and medicines for use of natives to be provided

(xx) 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

(xxi) 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.

(xxii) 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.

European agents

- (xviii) 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
- (xix) The Lessees shall provide at or near the site of their works such huts or other accommodation for the use of the native labourers or workmen employed in the Lessees' works and also such hospitals medical officers and attendants medicines and medical stores for the like use as may be necessary. Huts or other accommodation hospitals and medicines for use of natives to be provided
- (xx) 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
- (xxi) The Lessees will at all times during the term hereby granted observe the following provisions:— As to use 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.
- (xxii) 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. To deliver up

II.

- (c) Not more than one person shall at any one 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 served on the Lessees.
- (e) A Director appointed hereunder shall not require any qualification.
- (f) The Articles of Association of the Lessees shall provide accordingly and if necessary shall be altered in this behalf.
- (xxv) (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 shall not continue working at or 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.

6. 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 Lessees to be and remain British

11.

- (c) Not more than one person shall at any one 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 served on the Lessees.
- (e) A Director appointed hereunder shall not require any qualification.
- (f) The Articles of Association of the Lessees shall provide accordingly and if necessary shall be altered in this behalf.
- (xxv) (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 shall not continue working at or 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.
6. Provided always and these presents are upon the express conditions following:-
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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 forty 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) the Crown Agents or the Government may enter into and upon any of the demised premises or any adjoining or neighbouring lands or works for the time being held occupied or used by the Lessees together or in connection with the demised premises and may seize and distrain and sell as landlords may do under the laws of England for rent in arrear all or any of the Raw Soda then got and the Soda, Soda products and Manufactured Soda there found and the engines machinery plant animals implements and chattels belonging to the Lessees within under or upon the premises so entered upon and out of the moneys arising from the sale of any such distress may retain and pay all arrears of the said rent and royalties and also the costs and expenses incident to any such distress and sale rendering the surplus (if any) to the Lessees.

9. 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 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 re-possess and enjoy 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

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 forty 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) the Crown Agents or the Government may enter into and upon any of the demised premises or any adjoining or neighbouring lands or works for the time being held occupied or used by the Lessees together or in connection with the demised premises and may seize and distrain and sell as landlords may do under the laws of England for rent in arrear all or any of the Raw Soda then got and the Soda, Soda products and Manufactured Soda there found and the engines machinery plant animals implements and chattels belonging to the Lessees within under or upon the premises so entered upon and out of the moneys arising from the sale of any such distress may retain and pay all arrears of the said rent and royalties and also the costs and expenses incident to any such distress and sale rendering the surplus (if any) to the Lessees.

Power of distress

9. 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 or 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 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 re-possess and enjoy 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

Proviso for re-entry

agree to do within any specified time shall be delayed by any such cause such specified time shall be proportionately extended.

15. 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 such award 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 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 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

16. 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

17. 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 proceed ex parte

agree to do within any specified time shall be delayed by any such cause such specified time shall be proportionately extended.

15. 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 such award 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 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 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.

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May proceed *ex parte*

May inspect books
and accounts and
examine on oath

18. 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 any affirmation or on statutory declaration in lieu of oath the officers agents servants and witnesses of the parties respectively.

And provide for
costs

19. 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.

Marginal notes
not to affect
construction

20. 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

one of the Crown Agents for the
Colonies in the presence of

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

Directors

Secretary.

May inspect books
and accounts and
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18. 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.

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Signed sealed and delivered by

one of the Crown Agents for the
Colonies in the presence of

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

Directors

Secretary.

26.9.24.

S/45439/24 K.

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KENYA COLONY AND PROTECTORATE.

Lease

OF

RAILWAY TO LAKE MAGADI.

DATED

192

SUTTON, OMMANNEY & OLIVER,

3 & 4 Great Winchester Street,

London, E.C.2.

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KENYA COLONY AND PROTECTORATE

This Indenture made the _____ day of _____ 192

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 Nos. 25 and 27 Bishopsgate in the City of London (hereinafter referred to as "the Lessees" which expression shall where the context so admits include their successors and permitted assigns) of the other part.

Whereas by an Indenture (hereinafter called "the Magadi Lease") bearing even date with and executed before these presents and made between the same parties as are parties hereto and in the same order the lands known as "Lake Magadi" have been demised to the Lessees for a term of Ninety-nine years from the _____ day of _____ 192 _____ subject to the payment of the rent and royalties thereby reserved and the covenants on the part of the Lessees and the conditions therein contained for the purpose of working the deposits of carbonate of soda therein.

Lease of Magadi
Soda Deposits

And whereas for the purpose of working the said deposits the Lessees or their predecessors in title have at their own expense constructed the railway hereby demised and the port hereinafter defined upon lands provided by the Government.

Construction of
the Railway and
the Port

And whereas by an Indenture 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 Port hereinafter defined is intended to be demised to the Lessees from the said _____ day of _____ 192 _____ during such term as the Magadi Lease shall be subsisting.

The Port Lease

- (K) "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.
- (L) "Governor's Day" means such day after the date of the incorporation of the Lessees as the Governor shall fix for the commencement of the period of five years herein mentioned.
- (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 Railway constructed by the Lessees or their predecessors in title wholly in the Colony commencing at a junction with the Uganda Railway known as Magadi Junction and thence passing to a terminus near Lake Magadi together with the lands which have been provided by the Government for the purpose of the construction and working of the Railway and are now in the possession of the Lessees or of the Uganda Railway Administration.

Demise of Railway to Lessees

Together with full and free right and liberty for the Lessees to construct maintain renew repair and use any telegraph or telephone line or lines for the purposes of the Lessees' own business in connection with the Railway and the working of the Magadi Soda Deposit or either of them in along or over the demised premises or any part or parts thereof Provided always that the right and liberty aforesaid shall not be exercised so as to interfere with the working of the Railway by the Uganda Railway Administration under the provisions in that behalf hereinafter contained.

Liberty to Lessees to construct telegraph and telephone lines

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

Exceptions

- (i) All mines minerals and mineral substances including precious stones and all coins treasure relics antiquities and other similar

All other minerals precious stones etc.

the existence of which the Government shall be the sole
with all the resources of the Railway.

To hold unto the Lessees for the term of 99 years from the
day of 192 if the Magadi Lease shall so long
continue to subsist and be effective at the yearly rent of five shillings
payable yearly in advance without any deduction on the day of
in every year the first of such payments for the
first year 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 *ipso facto* determine also 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 the covenants or provisions herein contained.

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:—

- (i) The Lessees will pay the rent hereinbefore reserved at the
times and in the manner aforesaid.
- (ii) The sole and exclusive control and management of the Railway
shall be vested in the Uganda Railway Administration and the
following provisions shall have effect:—
- (A) The Uganda Railway Administration shall work the
Railway as a branch of the Uganda Railway and as part
of the general system of railways operated by the General
Manager.
- (B) The Lessees shall not claim or be entitled to receive from
the Uganda Railway Administration any preference or
priority whatsoever as to transport or the supply of
locomotives or rolling-stock or the maintenance or
equipment of the Railway or otherwise howsoever.
- (C) The Uganda Railway Administration may at their 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.
- (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.

Term

Lease to determine if Magadi Lease determined

Lessees' Covenants

To pay rent

Sole management of the Railway to be vested in the Uganda Railway Administration

The Railway to be worked as part of the Uganda Railway

No preference to given to Lessees

The Uganda Railway Administration may make alterations and additions to the Railway

Lessees to pay freight and observe the provisions hereinafter contained

the existence of which the Government shall be the sole judge) with all the resources of the Railway.

To hold unto the Lessees for the term of 99 years from the day of 192 if the Magadi Lease shall so long continue to subsist and be effective at the yearly rent of five shillings payable yearly in advance without any deduction on the day of in every year the first of such payments for the first year of the said term having been made on the execution of these presents as the Crown Agents and the Government hereby acknowledge.

Term

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

Lease to determine if Magadi Lease determined

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

Lessees' Covenants

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

To pay rent

(ii) The sole and exclusive control and management of the Railway shall be vested in the Uganda Railway Administration and the following provisions shall have effect:—

Sole management of the Railway to be vested in the Uganda Railway Administration

(A) The Uganda Railway Administration shall work the Railway as a branch of the 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 Uganda Railway

(B) The Lessees shall not claim or be entitled to receive from the Uganda Railway Administration any preference or priority whatsoever as to transport or the supply of locomotives or rolling-stock or the maintenance or equipment of the Railway or otherwise howsoever.

No preference to given to Lessees

(C) The Uganda Railway Administration may at their 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.

The Uganda Railway Administration may make alterations and additions to 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.

Lessees to pay freight and observe the provisions hereinafter contained

Government in respect of any antecedent breach of any of such covenants or obligations. Lessees

- (vi) 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 any excepted minerals
- (vii) (A) If and whenever any of the demised lands shall in the opinion of the General Manager be or become unnecessary for the purposes of the Railway the Lessees shall at any time thereafter upon the request in writing of the Government forthwith surrender the same to the Government. Superfluous lands
- (B) If any difference shall arise as to whether any land is or is not unnecessary for the purposes of the Railway such difference shall be referred to arbitration under the provisions in that behalf hereinafter contained.
- (viii) The Lessees shall comply with all obligations which may be imposed on them by any General Ordinance for the time being in force in the Colony. To comply with Ordinances
- (ix) 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
- (x) 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 make any payment in respect of such damages claims or losses then and in every such case the Lessees shall repay to the Government on demand the amount of the money so paid and of the costs incurred therein by the Government, but this clause shall not extend to any accident damage claim or loss which may occur or be incurred or claimed in or by reason of the working of the Railway by the Uganda Railway Administration unless the same shall have arisen from some neglect or default of the Lessees. To indemnify Government against claims

Government in respect of any antecedent breach by the Lessees of any of such covenants or obligations.

- (vi) 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 any excepted minerals
2. 21.5
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- (viii) The Lessees shall comply with all obligations which may be imposed on them by any General Ordinance for the time being in force in the Colony. To comply with Ordinances
- (ix) 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
- (ix) 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 make any payment in respect of such damages claims or losses then and in every such case the Lessees shall repay to the Government on demand the amount of the money so paid and of the costs incurred therein by the Government, but this clause shall not extend to any accident damage claim or loss which may occur or be incurred or claimed in or by reason of the working of the Railway by the Uganda Railway Administration unless the same shall have arisen from some neglect or default of the Lessees. To indemnify Government against claims

(iii) All the costs of construction and equipment of the Railway as aforesaid and of all labour and materials for the same shall be borne and paid by the Lessees.

(iv) The Lessees shall not be bound to incur a cost exceeding the sum of £15,000 in respect of the work aforesaid after the date of these presents.

6. (i) The Uganda Railway Administration shall at their own expense maintain the Railway so completed and equipped as aforesaid and keep the same in working order. Maintenance

(ii) Nothing in this Lease contained shall impose or be deemed or construed to impose any liability upon the Crown Agents the Government or the Uganda Railway Administration to fit, equip or maintain the Railway so as to be capable of carrying more than 160,000 tons of soda goods in any one year.

7. The Lessees shall at their own cost to all and any extraordinary repairs and renewals to the Railway properly attributable to capital expenditure and any difference as to whether any repairs or renewals are extraordinary repairs properly attributable to capital expenditure shall be referred to arbitration under the provisions in that behalf hereinafter contained. Extra-ordinary repairs

8. (i) The Uganda Railway Administration shall provide and maintain all locomotives and rolling stock necessary for the efficient working of the Railway. rolling stock

(ii) The Uganda Railway Administration shall not be bound to provide tank cars or any special wagons or conveniences for the carriage of liquid fuel and the Lessees shall provide and maintain such tank cars special wagons and conveniences (if any) as the Lessees may require for the carriage of their liquid fuel.

9. The Uganda Railway Administration shall carry all soda goods in trucks properly protected from the weather and from dirt. Protection of Soda Goods in Transit

10. The service of loading and unloading the Lessee's 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 Uganda Railway Administration. Loading and unloading

(iii) All the costs of construction and equipment of the Railway as aforesaid and of all labour and materials for the same shall be borne and paid by the Lessees.

(iv) The Lessees shall not be bound to incur a cost exceeding the sum of £15,000 in respect of the work aforesaid after the date of these presents.

6. (i) The Uganda Railway Administration shall at their own expense maintain the Railway so completed and equipped as aforesaid and keep the same in working order. Maintenance

(ii) Nothing in this Lease contained shall impose or be deemed or construed to impose any liability upon the Crown Agents the Government of the Uganda Railway Administration 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.

7. The Lessees shall at their own cost repair and any extraordinary repairs and renewals to the Railway properly attributable to capital expenditure and any difference as to whether any repairs or renewals are extraordinary repairs properly attributable to capital expenditure shall be referred to arbitration under the provisions in that behalf hereinafter contained. Extraordinary Repairs

8. (i) The Uganda Railway Administration shall provide and maintain all locomotives and rolling stock necessary for the efficient working of the Railway. Locomotives and Rolling Stock

(ii) The Uganda Railway Administration shall not be bound to provide tank cars or any special wagons or conveniences for the carriage of liquid fuel and the Lessees shall provide and maintain such tank cars special wagons and conveniences (if any) as the Lessees may require for the carriage of their liquid fuel.

9. The Uganda Railway Administration shall carry all soda goods in trucks properly protected from the weather and from dirt. Carriage of Soda Goods in Trucks

10. The service of loading and unloading the Lessee's 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 Uganda Railway Administration. Loading and unloading

(iii) All the costs of construction and equipment of the Railway as aforesaid and of all labour and materials for the same shall be borne and paid by the Lessees.

(iv) The Lessees shall not be bound to incur a cost exceeding the sum of £15,000 in respect of the work aforesaid after the date of these presents.

6. (i) The Uganda Railway Administration shall at their own expense maintain the Railway so completed and equipped as aforesaid and keep the same in working order. Maintenance

(ii) Nothing in this Lease contained shall impose or be deemed or construed to impose any liability upon the Crown Agents the Government or the Uganda Railway Administration to fit, equip or maintain the Railway so as to be capable of carrying more than 160,000 tons of soda goods in any one year.

7. The Lessees shall at their own cost install and any extraordinary repairs and renewals to the Railway properly attributable to capital expenditure and any difference as to whether any repairs or renewals are extraordinary repairs properly attributable to capital expenditure shall be referred to arbitration under the provisions in that behalf hereinafter contained. Extraordinary
Expenditure

8. (i) The Uganda Railway Administration shall provide and maintain all locomotives and rolling stock necessary for the efficient working of the Railway.

(ii) The Uganda Railway Administration shall not be bound to provide tank cars or any special wagons or conveniences for the carriage of liquid fuel and the Lessees shall provide and maintain such tank cars, special wagons and conveniences if at all as the Lessees may require for the carriage of their liquid fuel.

9. The Uganda Railway Administration shall carry all soda goods in trucks properly protected from the weather and from dirt. Protection of
Soda Goods in
Transport

10. The service of loading and unloading the Lessee's 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 Uganda Railway Administration. Loading and
unloading

- (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 the traffic and to whether the prevailing and probable selling price of the soda goods permits an increase in the rate of freight and to all other considerations which the arbitrators or their umpire may consider material.
- (vii) The award may allow the increase or any part thereof or may disallow the same and shall be confined and restricted within these limits accordingly.
- (viii) If the award shall not be made before the commencement of the period of five years to which the notice of increase relates the Lessees shall pay the increased rates specified in the notice as from the commencement of the said period and all proper adjustments and allowances consequential upon the award shall be made after award made.
- (ix) An increased rate shall continue in force for the period of five years to which it relates and thereafter until again increased as hereinbefore provided.
- (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.

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- (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.

Rates for other goods and fares for passengers

12. Except as hereinbefore provided the rates for goods and the fares for passengers carried over the Railway shall be fixed from time to time by the General Manager according to the scale for the time being and from time to time in force on the Uganda Railway.

Freight to be payable in advance

13. (i) All freight charges shall be payable in advance.

(ii) Any freight charge not paid in advance shall carry interest until actual payment thereof at the following rates that is to say during the first six months from and after the day on which the same should have been so paid in advance at the rate of £4 per cent. per annum and thereafter at the rate of £6 per cent. per annum.

(iii) The Lessees shall procure the payment of all freight charges not paid in advance to be secured by guarantees to the satisfaction of the Crown Agents.

Demurrage

14. The Lessees shall pay demurrage on trucks belonging to the Uganda Railway Administration according to the rates of the Uganda Railway Administration for the time being in force.

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

Lessees to be and remain British

(i) The Lessees and any company or corporation becoming by assignment or otherwise entitled to the term hereby granted or any part thereof or to possession of the demised premises or any part thereof shall be and remain British in constitution and character registered in Great Britain or in a British Colony and 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 demurrage hereby made without making any compensation but with full justice 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.

16. The Crown Agents hereby covenant with the Lessees as Lessors' Covenants follows :-

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

For quiet enjoyment

(ii) That the Uganda Railway Administration 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 Uganda Railway Administration or the General Manager.

For acts to be done by the Uganda Railway Administration

17. Provided always that if and whenever the said rent hereby reserved or any part thereof 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 lawfully 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 re-construction 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

Proviso for re-entry

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

- 5 (A) The sum of £ being the amount of the capital outlay made by the Lessees 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 extraordinary repairs and renewals properly attributable to capital expenditure.

The sums (if any) to be deducted from the aggregate of the two above-mentioned sums shall be ascertained as follows:—If and whenever in any year from and after Governor's Day the amount of freight rates payable by the Lessees shall fall short of a Railway rate on such freight of nine-sixteenths of a penny per ton mile then and in every such case the amount of the deficiency together with compound interest thereon at the rate of £4 per cent. per annum calculated with half-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 the Government as aforesaid

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

Rights of purchase not to prejudice other rights

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.

Notice of these provisions to be endorsed on debentures

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

Property to be conveyed free from incumbrances

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

General Manager may delegate

21. 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:—

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General Manager may delegate

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 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 notice to appoint the same the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference and his award shall be final and binding upon all parties and all the provisions herein contained with reference to the proceedings of two arbitrators and an umpire shall *mutatis mutandis* be applicable to such sole arbitrator.

as a law book

31. The arbitrators and umpire shall have full power to make such award as 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

32. 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 proceed
ex parte

33. 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.

May inspect books
and accounts and
examine on oath

34. 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

Members or officers
of Government not
to be personally
liable

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

Certificates of the
Governor

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.

Notices how to be
given to Lessees

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.

Force majeure

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 shewn 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.

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 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 shall *mutatis mutandis* be applicable to such sole arbitrator.

31. The arbitrators and umpire shall have full power to make such award as 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

32. 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 proceed
ex parte

33. 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.

May inspect books
and accounts and
examine on oath

34. 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

35. 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
 one of
 the Crown Agents for the Colonies
 in the presence of

The Common Seal of the Magadi
 Soda Company Limited was here-
 unto affixed in the presence of

} Directors.

Secretary.

Marginal notes

204.5

18

35. 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
 one of
 the Crown Agents for the Colonies
 in the presence of }

The Common Seal of the Magadi
Soda Company Limited was here-
unto affixed in the presence of }

} Directors.

Secretary.

S. Kenya
25739/94

312

DRAFT.

30 Sept 1924.

1009

Mr. W. G. Gordon

MINUTE.

See 45546/24

Sir,

with ref to your tel. no.

295 of the 24th of Sept^r,
re: previous correspondence

regarding the ~~Lake~~ Lake

Soda Company, Limited,

I have pleasure to transmit to you
two copies each of new

leases of Lake Lagadi

& the Railway to Lake

Lake

Mr. Bull Sept 24

Mr. Jeffries 24/9

Mr. C. Davis.

Mr. G. Grindle.

Mr. H. Read.

Mr. J. Masterton Smith.

Mr. Arnold.

Mr. Thomas.

2 copies of Lake Lagadi
leases of Railway
(2 copies of each)

W.G.G.

S. 45739/94 Kenya

DRAFT.

30 Sept 1924

1009

Windsor

MINUTE.

Sec 45546/94

Sir,
with ref to you tel. No.

Mr. Brew Sept 24

Mr. Jeffries 24/9

Mr. C. Davis.

Mr. G. Grindle.

Mr. H. Read.

Mr. J. Masterton Smith.

Mr. Arnold.

Mr. Thomas.

295 of the 24th of Sept^r,
reminis corse,
regarding the ~~new~~ Lake
Soda Company, Limited,

I have re to transmit by
drop of
two copies each of new
leases of Lake Lagadi
& the Railway to Lake

of Lake Lagadi
cases of Railway
(2 copies of each)

refs

Magadi, together with
a copy of a letter from
Messrs. Sutton, Ommannen
& Oliver on the subject.

2. The drafts have
not yet been considered
by me, but it is desired
to lose no time in com-
-municating them to
you in your mission.

(Signed) J. H. THOMAS

Magadi, together with
a copy of a letter from
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& Oliver on the subject.

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not yet been considered
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to lose no time in com-
-municating them to
you in your cursor.

(Signed) J. H. THOMAS

S. 45739/24 Kenya

313

C. D.
R 29 SEP
D 29

~~JKC~~

DRAFT. 3/24

30 Sept 1924

Walter O'Sullivan
& Oliver

The ms of for the

MINUTE.

Bred Sept 29

Jeffries 29/9

- Mr O. Davis.
- Mr G. Grindle.
- Mr H. Reed.
- Mr J. Masterton Smith.
- Mr Arnold.
- Mr Thomas.

Cols present his compl
to Messrs. Sullon O'Sullivan

& Oliver and with ref to

their letter of the 25th of

Sept regarding the ~~revisi~~
revision of the

Magadi Soda Company's
lease, begs to
~~submit~~ request that three

2/2/24

S. 45739/24 Kenya

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C. D.
R 29 SEP
D 29

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DRAFT. 2/2.

30 Sept 1924

Messrs Sullimann & Oliver

The mt of 1 for the

MINUTE.

Bred Sept 29

Cols present. his compts

Jeffries 29/9

to Messrs Sullimann

- Mr. O. Davis.
- Mr. G. Grindie.
- Mr. H. Ross.
- Mr. J. Masterton Smith.
- Mr. Arnold.
- Mr. Thomas.

& Oliver and with ref to

their letter of the 25th of

Sept regarding the ~~revis~~ revision of the

Magadi Soda Company's

lease, begs to

submit request that three

2/2

additional
copies of each of the two days

are enclosed therein

may be sent to the

CV

additional:

Copies of each of the two diff

cases enclosed therein

may be sent to the

CV