

1924

KENYA

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14267
REC
RL 25 MAR 24

FROM

*Touche & Co.
P.A.*

DATE

24th March 1924

FOR CIRCULATION :-

Mr.

Mr.

Mr.

Asst. U.S. of S.

Magadi Soda Co.
Reconstruction

Perm. U.S. of S.

Part U.S. of S.

Secretary of State.

Reports that at a meeting of the Co. of Shareholders, they were instructed to bring the approved scheme before the Court & the various classes of shareholders & creditors

Previous Paper

*Sas. 8.6
4095 4054*

MINUTES

Paper in circulation

No action, but send up

again when process returns

C.C.S. 26.3.24

atm

S.A.

Subsequent Paper

70 18165

MINUTES.

MINUTES NOT TO BE WRITTEN
ON THIS SIDE

bser

GEORGE A. TOUCHE & CO.
Chartered Accountants

SIR GEORGE ALEXANDER TOUCHE, BART
ANDREW WILSON TAIT, C.B.E.
LESLIE WHITTEN HARRISON
JONOVAN MERRIOTH TOUCHE
JAMES TAIT
JOHN JAMES HUNTER

TELEPHONE NO.
5252 LONDON WALL, LONDON
TELEGRAPHIC ADDRESS
HETEXO STOCK LONDON
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HETEXO LONDON

BRANCHES
BIRMINGHAM
NEW YORK CHICAGO MINNEAPOLIS ST. LOUIS CLEVELAND (U.S.A.)
MONTREAL TORONTO WINNIPEG CALGARY EDMONTON VANCOUVER
BUENOS AIRES ROSARIO (ARGENTINE)
RIO DE JANEIRO (BRAZIL)
MONTEVIDEO (URUGUAY)
VALPARAISO (CHILE)

411

267
25 MAR 24

BASILDON HOUSE,
7-11, MOORGATE,
LONDON, E.C.2.

Reference No. 12588/24.

24th March, 1924.

Sir,

THE MAGADI SODA COMPANY, LIMITED.
(In Voluntary Liquidation).

I have to acknowledge receipt of your letter of to-day's date, intimating that Mr. Secretary Thomas, after careful consideration of the alternative scheme put forward by Messrs. Brunner, Mond & Co. for the reconstruction of the above Company, has decided to adhere to the decision of his predecessor, approving the reconstruction scheme which has been underwritten by Messrs. Cull & Co.

Certain modifications of the details of that scheme are at present being agreed with the Underwriters, and I have to inform you that at a Meeting of the Committee of Shareholders held at this office this afternoon, I was instructed to take immediate steps to bring that scheme, as modified, before the Court and the various classes of shareholders and creditors.

I am, Sir,
Your obedient Servant,

James Yair
For the Liquidator.

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

GEORGE A. TOUCHE & CO.
Chartered Accountants

SIR GEORGE ALFRED TOM HE BART
ARTHUR WILSON TAIT, C.B.E.
LESLIE WHITTEN HAWKINS
LEONARD MERRIFIELD BARTON
JAMES TAIT
WALTER JAMES HENNING

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BRANCHES
BIRMINGHAM
NEW YORK CHICAGO MINNEAPOLIS ST. LOUIS CLEVELAND USA
MONTREAL TORONTO WINNIPEG CALGARY EDMONTON VANCOUVER CANADA
BUENOS AIRES ROSARIO (ARGENTINE)
RIO DE JANEIRO (BRAZIL)
MONTEVIDEO (URUGUAY)
VALPARAISO (CHILE)

14237
25 1924
BASILDON HOUSE,
7 II, MOORGATE,
LONDON, E.C. 2

Reference No. 12388/24.

24th March, 1924.

Sir,

THE MAGADI SODA COMPANY, LIMITED.
(In Voluntary Liquidation).

I have to acknowledge receipt of your letter of to-day's date, intimating that Mr. Secretary Thomas, after careful consideration of the alternative scheme put forward by Messrs. Brunner, Mond & Co. for the reconstruction of the above Company, has decided to adhere to the decision of his predecessor, approving the reconstruction scheme which has been underwritten by Messrs. Cull & Co.

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I am, Sir,
Your obedient Servant,

James Vail
For the Liquidator.

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

Ann 5 (1) (v)

15.6.27

402

KENYA COLONY AND PROTECTORATE.

Lease

OF

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

DATED

192

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

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COLONY OF KENYA.

REGISTRY OF TITLES.

(DISTRICT.)

TITLE No.

ANNUAL RENT Shs.20/-.

TERM 99 years From 1.11.1924 to 31.10.2023.

Know all Men by these presents that for the consideration hereinafter expressed I EDWARD WILLIAM MACLEAY GRIGG Knight Commander of the Royal Victorian Order Companion of the Most Distinguished Order of Saint Michael and Saint George Companion of the Distinguished Service Order upon whom His Majesty has conferred the decoration of the Military Cross Lieutenant-Colonel in His Majesty's Army (retired) the GOVERNOR AND COMMANDER IN CHIEF OF THE COLONY AND PROTECTORATE OF KENYA on behalf of HIS MOST GRACIOUS MAJESTY KING GEORGE THE FIFTH do hereby under and by virtue of the powers ~~vested~~ in me **Grant** unto the MAGADI SODA COMPANY LIMITED a Company incorporated pursuant to the laws of England under the Companies Acts 1908 to 1917 and having its registered office situate at No. 19 Coleman Street 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) **All those** two pieces of land situate at Lake Magadi in the Masai Province of the said Colony containing together by measurement Two hundred and twenty-two thousand seven hundred and eighty-eight acres more or less that is to say Land Office Nos. 1026 and 3867 of Meridional District South A 37 G. III. c & d and (M. I. a & b) which said pieces of land with the dimensions

Schedule.

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 No. 19 Coleman Street 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.

And whereas by an Indenture (hereinafter called "the Railway The Railway Lease Lease") already prepared and engrossed and intended to bear even date with and to be executed immediately after these presents and made between the same parties as are parties hereto and in the same order the Railway commencing at Magadi Junction on the Kenya and Uganda Railway and thence passing to a terminus near Lake Magadi Together with all lands which have been provided by the Government for the purpose of the construction and working of the said Railway is intended to be demised to the Lessees for a term of ninety-nine years from the 1st day of November 1924, subject to the payment of the rent and royalties thereby reserved and the covenants on the part of the Lessees and the conditions therein contained for the purpose of working the said Railway

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

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

(11,678 acres more or less that is to say LO. No. 3867 of Meridional District South A 37 MIA and B) which said two pieces of land containing together by admeasurement 222,788 acres more or less are bordered and delineated on the plan drawn on these presents and more particularly on Land Survey Plan No. 12,767 deposited in the Land Surveys Office at Nairobi Together with the Magadi soda deposit and Together with full free and uninterrupted right for the Lessees their officers servants and workmen to search for dig get win and carry away all the Magadi Soda Deposit Together also with full and free liberty and right for the Lessees their servants and agents of access to the Guaso Nyiro and all reasonable facilities for obtaining and leading water therefrom or thereto for the purposes of their servants or agents and for the purposes of the Lessees' operations and for any other purposes of the demised premises.

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

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

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

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

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

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

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

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

LESSEES' COVENANTS

- (i) The Lessees will pay the rent and royalties hereinbefore reserved and made payable at the times and in the manner aforesaid. To pay rent and royalties
- (ii) For the purpose of ascertaining the amount of royalties payable hereunder the Lessees will keep proper books of account and the Lessees will keep such books from the commencement of the term hereby granted as if royalties were hereby made payable during the whole of the said term and permit the Government and any agent appointed for that purpose at all reasonable times to inspect the said books of account and to take copies thereof and extracts therefrom. To keep proper books and permit inspection
- (iii) On the 30th day of April and the 31st day of October in each year of the term hereby granted or within 28 days thereafter the Lessees will render to the Government an account showing the amount of Raw Soda Soda Products and Manufactured Soda respectively exported from sold and delivered or used for commercial purposes within the Colony during the six months ending on such 30th day of April or To render accounts

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

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

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

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

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

To deliver up

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

Not to assign
without licence

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

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

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

aforesaid shall be and remain a British Company under British control may refuse their consent to such alteration.

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

7. The Crown Agents hereby covenant with the Lessees that the Lessees paying the rent and royalties hereby 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.

LESSOR'S
COVENANT
For quiet
enjoyment

8. Provided always that if and whenever the said rent and royalties hereby reserved or made payable or any part thereof respectively shall be in arrear for the space of sixty days next after any of the days whereon the same ought to be paid as aforesaid (whether the same shall or shall not have been legally demanded) or if there shall be any breach or non-observance of any of the covenants on the part of the Lessees (whether negative or affirmative) herein contained or if the Lessees while the demised premises or any part thereof remain vested in them shall go into liquidation whether voluntary or compulsory (except with the consent in writing of the Government a voluntary liquidation for the purpose of reconstruction only) or suffer a receiver of their undertaking or any part thereof to be appointed by any Court of competent jurisdiction or commit any act which would render the Lessees liable to be wound up on petition or in the case of assigns of the Lessees not being a corporation shall or any of them shall become bankrupt or make any assignment for the benefit of or enter into any arrangement for composition with their or his creditors then and in any of the said cases it shall be lawful for the Crown Agents or the Government although they may not have taken advantage of some previous default of the like nature at any time thereafter to re-enter into and upon the demised premises or any part

Proviso for
re-entry

reasonable satisfaction of the Governor that the default has arisen from *force majeure* that is to say any of the following causes namely the act of God insurrection riots war strikes or combinations or lock-outs of workmen not properly attributable to the improper acts or defaults of the Lessees or any other circumstances whether *ejusdem generis* with the foregoing circumstances or not which in the opinion of the Governor may be beyond the reasonable control of the Lessees. And if and so often as anything which the Lessees hereby agree to do within any specified time shall be delayed by any such cause such specified time shall be proportionately extended.

14. (i) In case and so often as any dispute difference or question shall arise between the said parties hereto or any Government Corporation Company or person claiming through or under them respectively or between any of such parties Governments Corporations Companies or persons concerning or relating to the demised premises or the Lessees' works or any part thereof respectively or the construction meaning or effect of these presents or of any award made in pursuance hereof or any clause or thing contained in this Lease or in any such award as aforesaid or the rights or liabilities of any party hereto or of any such Government Corporation Company or person as aforesaid under these presents or any 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.

(ii) The arbitrators and umpire shall have full power to make if they or he think fit several awards instead of one award and every

Dispute to
Arbitration

Arbitrators may
make partial awards

such award though not on the whole matter shall be final so far as it extends and as if the matter awarded on were the whole matter referred.

May proceed
ex parte

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

May inspect books
and accounts and
examine on oath

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

And provide for
costs

(v) The costs of the reference and 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

15. 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.

17.3.26

Enclosure to Magadi Coy's letter of 18.8.26
No 27 on X.F. 4255/26 Kenya.

KENYA COLONY AND PROTECTORATE. 415

Lease

OF

RAILWAY TO LAKE MAGADI.

DATED

192 .

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

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COLONY OF KENYA.

REGISTRY OF TITLES.

(DISTRICT).

TITLE No.

ANNUAL RENT Shs. 5/-

51.40

TERM 99 years from 1.11.1924 to ~~1923~~ 2023.

Know all Men by these presents that for the consideration hereinafter expressed I, EDWARD WILLIAM MACLEAY GRIGG, Knight Commander of the Royal Victorian Order, Companion of the Most Distinguished Order of Saint Michael and Saint George, Companion of the Distinguished Service Order upon whom His Majesty has conferred the decoration of the Military Cross, Lieutenant-Colonel in His Majesty's Army (retired) the GOVERNOR and Commander in Chief of the Colony and Protectorate of Kenya, on behalf of HIS MOST GRACIOUS MAJESTY KING GEORGE THE FIFTH do hereby under and by virtue of the powers vested in me **Grant** unto the MAGADI SODA COMPANY LIMITED a Company incorporated pursuant to the laws of England under the Companies Acts 1908 ~~1917~~ 1917 and having its registered office situate at No. 19 Coleman Street 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) **All that** piece of land situate to the East of Lake Magadi in the Masai Province of the said Colony containing by measurement two thousand two hundred and nine acres more or less that is to say Land Office Number 2341 of Meridional District South A 37 G & H together with the Railway running there-through and thereon which said piece of land and railway with the dimensions abutments and boundaries thereof is delineated on the plan drawn on these presents and more

Schedule.

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 No. 19 Coleman Street 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

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

Lease of Magadi
Soda Deposits

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

Construction of
the Railway and
the Magadi Pier and
Depot Works

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

The Port Lease

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

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

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

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

Interpretation

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

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

- (i) "The Port Lease" means the second before recited Lease of even date.
- (j) "The Magadi Soda Deposit" means the deposits of carbonate of soda and/or carbonate of soda mixed with any other salts included in and demised by the Magadi Lease.
- (k) "The Magadi Pier and Depot Works" means the pier, depot, works, conveniences and siding at or near Kilindini included in and intended to be demised by the secondly before recited Lease of even date herewith.
- (l) "Soda Goods" means all or any of the following:—
 - (i) "Raw Soda" that is to say carbonate of soda and/or carbonate of soda mixed with any other salts as obtained from the Magadi Soda Deposit before calcination.
 - (ii) "Soda" that is to say soda ash, carbonate of soda and/or other salts of soda as obtained from raw soda as above mentioned
 - (iii) "Soda products" that is to say soda crystals, caustic soda, bicarbonate of soda and/or any other commodities or preparations which are recognised as soda products in the chemical industry
 - (iv) "Manufactured soda" that is to say manufactured articles or merchandise of which soda or soda products as above mentioned respectively form the essential or main constituents
- (m) "Month" means calendar month

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

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

Demise of Railway to Lessees

Liberty to Lessees to construct telegraph and telephone lines

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

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

Carrriage of military etc

To hold unto the Lessees for the term of 99 years from the 1st day of November 1924 if the Magadi Lease shall so long continue to subsist and be effective at the yearly rent of five shillings payable yearly in advance without any deduction on the 1st day of January in every year and so in proportion for any less period than one year the ~~first of~~ ~~each~~ 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 subject to the provisions of Clause 18 of these presents and without prejudice to any right of action or remedy of the Crown Agents or the Government in respect of any antecedent breach by the Lessees of any of the covenants or provisions herein contained

Lease to determine if Magadi Lease determined

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

Lease to determine if Magadi Lease determined

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

Lease to determine if Magadi Lease determined

(ii) The sole and exclusive control and management of the Railway shall be vested in the High Commissioner for Transport and the following provisions shall have effect

See that the sole and exclusive control and management of the Railway shall be vested in the High Commissioner for Transport

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

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

for the latter year. No excess of tonnage in any preceding year shall be allowed towards making good a deficiency in any subsequent year.

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

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

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

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

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

- (x) In everything done hereunder the Lessees shall interfere with public and private conveniences and rights as little as possible and shall take all such precautions and provide and maintain all such temporary and permanent accommodation works as shall be reasonably required for the prevention of damage or injury to any property or person or for the due preservation or maintenance of any public right or property. Not to interfere with public or private rights
- (xi) The Lessees shall be solely responsible for and shall indemnify and keep indemnified the Government against all accidents damages claims and losses, which may occur or be incurred or claimed in or by reason of anything done upon the demised premises or any part thereof and if the Government shall by reason of the default of the Lessees make any payment in respect of such damages claims or losses then and in every such case the Lessees shall repay to the Government on demand the amount of the money so paid and of the costs incurred therein by the Government but this clause shall not extend to any accident damage claim or loss which may occur or be incurred or claimed in or by reason of the working of the Railway by the High Commissioner for Transport unless the same shall have arisen from some neglect or default of the Lessees. To indemnify Government against claims
- (xii) The Lessees shall at all times provide a suitable office on the site of the Railway or the Kenya and Uganda Railway where notices may be left for or addressed to the Lessees. Contractors to provide office
- (xiii) The Lessees shall not at any time during the term hereby granted sell give barter or otherwise dispose of any arms or ammunition of any description to any native or permit or suffer any such sale gift barter or other disposition to be made by any employee or agent of the Lessees. No arms or ammunition to be sold to natives
- (xiv) The Lessees shall not at any time during the term hereby granted sell give barter or otherwise dispose of any spirituous liquor to any native or permit or suffer any such sale gift barter or other disposition to be made by any employee or agent of the Lessees or import or authorise the importation of any spirituous liquor into the Colony except for the use of the European agents or employees of the Lessees and in accordance with and subject to such rules as may from time to time be made by the Governor in that behalf. No spirituous liquor to be sold to natives nor imported except for Europeans
- (xv) If the Government shall at any time during the term hereby granted incur any expenditure in erecting or maintaining any sanitary works or regulations upon or in the neighbourhood of the Railway the Lessees shall so far as such expenditure is As to liability of Lessees to special sanitary measures

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

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

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

TOTAL WEIGHT CARRIED.	RATE PER TON FOR EACH TON CARRIED.
Not exceeding 150,000 tons	Sh. 20.00
Exceeding 150,000 tons	18.00

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

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

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

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

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

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

Rates for other goods and fares for passengers

12. (i) All freight charges shall be payable to the High Commissioner for Transport in advance, or if the Lessees desire it the same shall be

Freight to be payable in advance

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

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

Demurrage

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

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

Lessees to be and remain British

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

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

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

- (i) The Lessees paying the rent hereby reserved and observing and performing the covenants and conditions herein contained and on the Lessees' part to be observed and performed shall and may peaceably and quietly possess and enjoy the demised premises during the said term without any lawful interruption from or by the Crown Agents or the Government or any persons rightfully claiming from or under them. For quiet enjoyment
- (ii) That the High Commissioner for Transport and the General Manager will at all times observe the provisions of this Lease so far as the same relate to acts and things to be performed or done by the High Commissioner for Transport or the General Manager. For acts to be done by the High Commissioner for Transport
- (iii) No land within a quarter of a mile on either side of the railway from Magadi Junction to Lake Magadi shall be sold leased or otherwise disposed of by the Government to any person persons or corporation other than the Lessees without first giving to the Lessees the option of acquiring from the Government the whole of the land so proposed to be sold leased or otherwise disposed of on the same or similar terms and conditions as those on which the Government may be willing to sell lease or otherwise dispose of the same to any other person persons or corporation and such option shall be exercisable by the Lessees within two months from and after service upon the Lessees of notice in that behalf. Lessees to have first refusal of all land near railway

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

the Lessees liable to be wound up on petition 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 demise premises or any part thereof in the name of the whole to re-enter and the same to have again repossess and enjoy as in their former estate but subject to the provisions of Clause 18 of these presents And thereupon this Lease shall cease and determine but without prejudice to any right of action or remedy which may have accrued to the Crown Agents or the Government in respect of any antecedent breach by the Lessees of any of the covenants or provisions herein contained provided that this proviso for re-entry shall be subject to all such restrictions and conditions and such relief against forfeiture as shall for the time being be applicable under the laws of England to provisos for re-entry contained in leases of similar property in England.

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

18. If this Lease shall be determined otherwise than by effluxion of the said term of 99 years the Government shall have the right to purchase the Railway and all the assets and property whatsoever of the Lessees used for the purposes of or in connection with the Railway at the price hereinafter mentioned upon giving to the Lessees one month's notice in writing in that behalf such notice to be given within one month next after the determination of the Lease.

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

(ii) If the Government shall exercise this present right then from and after the completion of the purchase until the expiration or sooner determination of the Magadi Lease the Lessees shall be entitled to the following rights and privileges:—

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

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

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

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

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

Option to the Government to purchase on sooner determination

Option to the Government to purchase at any time

If option exercised the Lessees to have certain rights

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

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

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.

Arbitrators may
make partial awards

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

May proceed
ex parte

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

May inspect books
and accounts and
examine on oath

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

And provide for
costs

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

Marginal notes

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

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

Signed Sealed and Delivered by
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

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.

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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 here
unto affixed in the presence of

Directors

Secretary

17.3.26

Enclosure to Nagadi Coy's letter of 18.8.26
No. 27 on XF4255/26 Ken

429

COLONY AND PROTECTORATE OF KENYA.

Lease

OF

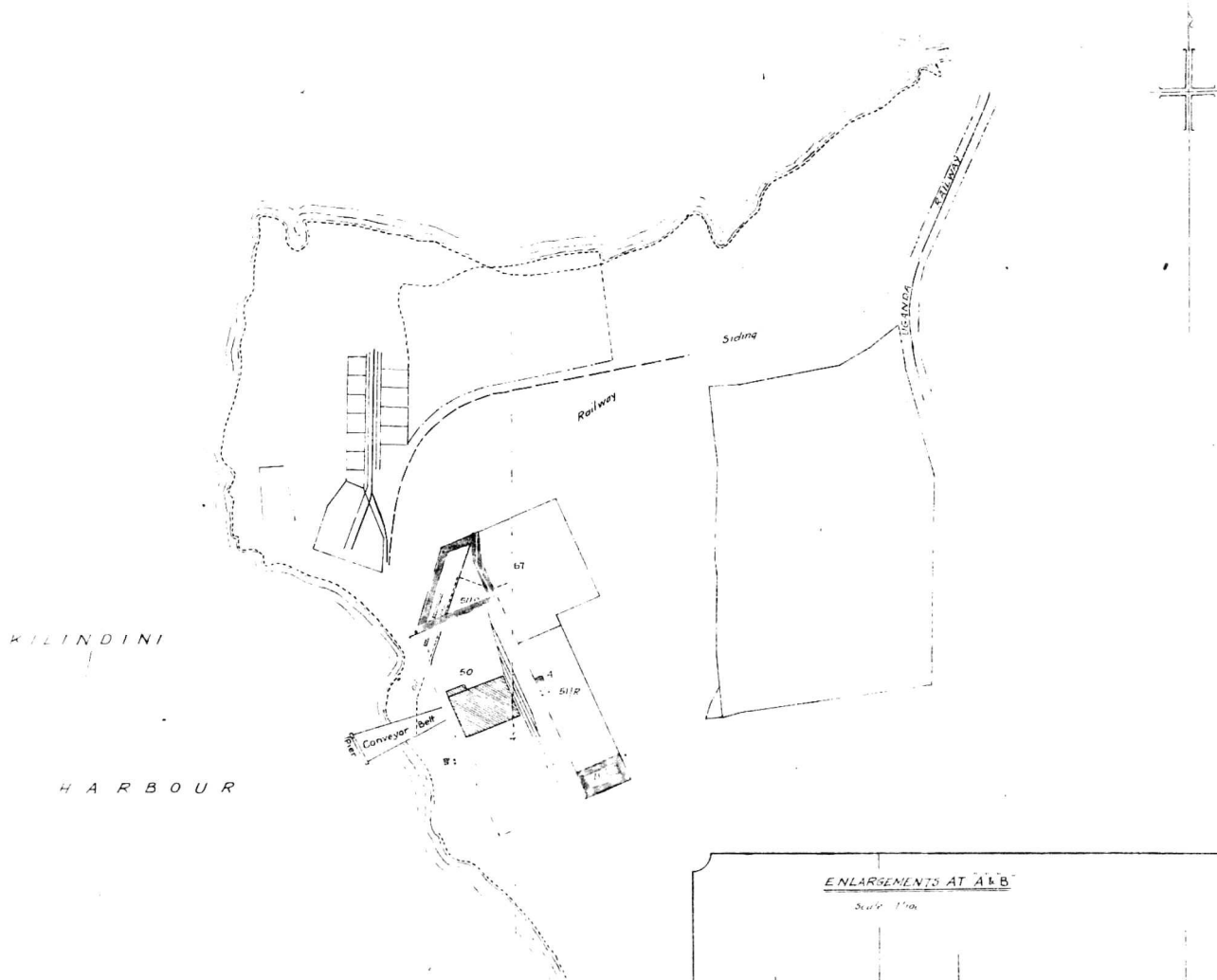
**PORT, BRANCH RAILWAY LINE, WORKS AND PIER
AT KILINDINI.**

DATED 192

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

PLAN SHOWING LAND, SIDING & PIER AT KILINDINI TO BE DEMISED TO THE MAGADI SODA COMPANY

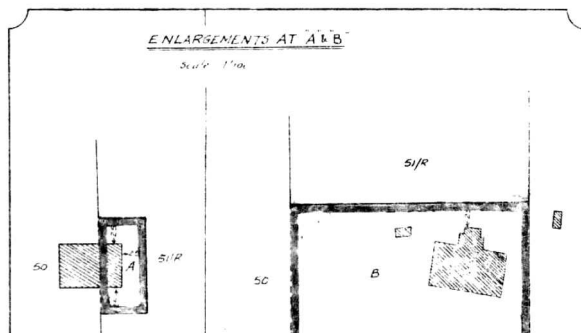
Scale: 1/5000



H A R B O U R

Area coloured Red = 3.65 Acres

Green = 3.89 "



COLONY OF KENYA.

REGISTRY OF TITLES.

(DISTRICT.)

TITLE No.

ANNUAL RENT ~~Shs. 5,502 etc. 86~~ *One peppercorn*

TERM 99 years From 1.11 1924 to ^{31 10} ~~19~~ 2023.

Know all Men by these presents that for the consideration hereinafter expressed I EDWARD WILLIAM MACLEAY GRIGG Knight Commander of the Royal Victorian Order Companion of the Most Distinguished Order of Saint Michael and Saint George Companion of the Distinguished Service Order upon whom His Majesty has conferred the decoration of the Military Cross Lieutenant-Colonel in His Majesty's Army (retired) the GOVERNOR AND COMMANDER IN CHIEF OF THE COLONY AND PROTECTORATE OF KENYA on behalf of HIS MOST GRACIOUS MAJESTY KING GEORGE THE FIFTH do hereby under and by virtue of the powers vested in me **Grant** unto the MAGADI SODA COMPANY LIMITED a Company incorporated pursuant to the laws of England under the Companies Acts 1908 to 1917 and having its registered office situate at No. 19 Coleman Street 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) **All that** piece of land situate in the District of the Province of the said Colony containing by measurement acres more or less that is to say Portion No. Land Office No. of Meridional District which said piece of land with

Schedule.

COLONY AND PROTECTORATE OF KENYA.

This Indenture made the _____ day of _____

One thousand nine hundred and twenty _____ **Between** THE CROWN AGENTS FOR THE COLONIES (hereinafter referred to as "the Crown Agents") acting for and on behalf of the Government of the Colony and Protectorate of Kenya (hereinafter referred to as "the Government") of the one part and the MAGADI SODA COMPANY LIMITED (a Company incorporated pursuant to the laws of England under the Companies Acts 1908 to 1917 and having its registered office situate at No. 19 Coleman Street in the City of London (hereinafter referred to as "the Lessees") which expression shall where the context so admits include its 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 the parties hereto and in the same order the lands known as "Lake Magadi" have been demised to the Lessees for a term of Ninety nine years from the 1st day of November 1924 subject to the payment of the rent and royalties thereby reserved and the covenants on the part of the Lessees and the conditions therein contained for the purpose of working the deposits of carbonate of soda therein

See Magadi
Soda Report

And whereas by an Indenture (hereinafter called "the Railway Lease") bearing even date with and executed before these presents and made between the same parties as the parties hereto and in the same order the railway commencing at Magadi Junction in the Kenya and Uganda Railway and thence passing to a terminus near Lake Magadi TOGETHER with all lands which have been provided by the Government for the purpose of the construction and working of the said Railway have been demised to the Lessees for a term of Ninety nine years from the 1st day of November 1924 subject to the payment of the rent and royalties thereby reserved and the covenants on the part of the Lessees and the conditions therein contained for the purpose of working the said Railway

See Magadi
Soda Report

Agreement
for Lease

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

And whereas the Government have agreed to grant and the Lessees have agreed to take a lease of the Magadi Pier and Depot Works now demised including the Depot Works, Shimanzi Pier and Branch Railway at Kilindini

And whereas it has been agreed that the ^{Said lease} same shall be in the form of these presents and shall contain such covenants and provisions as hereinafter contained

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

Interpretation

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

- (A) "The Colony" means the Colony and Protectorate of Kenya.

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

And whereas the Government have agreed to grant and the Lessees have agreed to take a lease of the Magadi Pier and Depot Works now demised including the Depot Works, Shimanzi Pier and Branch Railway at Kilindini

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

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

Interpretation

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

- (A) "The Colony" means the Colony and Protectorate of Kenya.

RIDER to PAGE 5.

(D) "Shimanzi Pier" means the pier included in the demise hereby made.

(E) "The Branch Railway" means the railway line included in the demise hereby made and connecting the Depot Works hereby demised with the Kenya and Uganda Railway.

(F) "Soda Goods" means Soda Goods as defined in the Magadi Lease.

LEASE OF SOGA GATE HEREBY MADE.

(G) "Month" means calendar month.

(J) ~~"The Magadi Pier and Depot Works" means the site hereby demised together with Depot Works, Shimanzi Pier and the Branch Railway Line and all works apparatus and conveniences in connection herewith.~~

2.—The Crown Agents for and on behalf of the Government hereby grant and demise to the Lessees all that Depot Works situate at Shimanzi near Kilindini known as the Magadi Depot and the ~~adjacent thereto and known as Shimanzi Pier and the Branch Railway Line leading from the Kenya and Uganda Railway at Kilindini to the said Depot Works together with all appurtenances and all the land held therewith~~ ^{Demise of Depot Works, Shimanzi Pier, Branch Railway Line and conveniences to Lessees} ~~and more particularly described in Schedule attached.~~ ^{including the Branch Railway and appurtenances used in connection therewith} which are and the site thereof is delineated on the plan in ^{and the boundaries of} and is thereon coloured ~~and more particularly described in Schedule attached.~~

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

(i) All mines minerals and mineral substances including ^{All other minerals, precious stones, etc.} precious stones and all coins treasure relics antiquities and

Agreement
for Lease

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

And whereas the Government have agreed to grant and the Lessées have agreed to take a lease of the Magadi Pier and Depot Works now demised including the Depot Works, Shimanzi Pier and Branch Railway at Kilindini

And whereas it has been agreed that the ^{Said lease} ~~same~~ shall be in the form of these presents and shall contain such covenants and provisions as hereinafter contained

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

Interpretation

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

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

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

In case of urgency
to take possession

- (ii) Full and free right and liberty for the Government in any case of State urgency (as to the existence of which the Government shall be the sole judge) at any time or times without any consent of or notice to the Lessees to take temporary possession of the whole or any part of the demised premises and any rolling-stock telegraphs telephones buildings and other things of every description belonging to the Lessees in connection with the same and to use the same for ~~the~~ own purposes paying nevertheless therefor reasonable compensation to the Lessees.

Government user of
branch railway

- ~~(iii) The full right of passage for any Government ^{and} public user of railway traffic over the said Branch Railway Line to and from the Kenya and Uganda Railway to the Government Pier at Kilindini now under construction. And the full right to divert, take up, relay or in any way alter the said Branch Railway provided that the rights of the Lessees under the lease to the use of the Branch Railway shall not be altered or reduced by reason of any diversion, taking up, relaying or altering of the Branch Railway. And the full right of passage and if and when required the right to construct and maintain a public road of a width of 50 feet between the Depot Works and the foreshore, the said passage ^{and} road to pass over or under any structure built ^{and} or used by the Lessees between the Depot Works and the Shimanzi Pier as the Lessors may decide. Provided always that the said passage or road shall not interfere with the said structure or with the efficient working thereof nor shall this reservation~~

RIDER to PAGE 6.

Government user
of Branch Rail-
way.

- (iii) Full and free right and liberty for the Government from time to time and at any time to pass traffic *between the points marked C & D on the said plan* over the Branch Railway for any Government or public purpose.

Alteration of
Branch Railway

- (iv) Full and free right and liberty for the Government from time to time and at any time to divert, take up, relay or in any way alter the Branch Railway. Provided that the use and enjoyment thereof by the Lessees shall not be thereby permanently prejudiced. *and that the present means of access to the remainder of the demised premises shall not be materially altered.*

Right of Way
adjacent to the
Foreshore.

- (v) Full and free right and liberty for the Government and their assigns of way at all times and for all purposes over a strip of land not exceeding 50 feet in width adjacent to the foreshore where co-extensive with the demised premises.

Right to make
a public Road.

- (vi) Full and free right and liberty for the Government *over the strip of land mentioned in the preceding sub-clause* to construct and maintain a public road *not exceed-*ing 50 feet in width adjacent to the foreshore ~~where co-extensive with the demised premises in such~~ position as the Government may think fit.

6
C. in black
437

RIDER to PAGE 7.

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

prevent the Lessors from effecting any strengthening of the said structure which they may deem necessary provided such strengthening does not interfere with the effective user of the said road or passage.

To hold unto the Lessees ~~as~~ from the 1st day of November 1924, for ~~a~~ term of 99 years at a yearly rental of ~~upon payment of the premium and rent hereinafter reserved and subject to determination as hereinafter provided payable on the~~ 1st day of January every year, and so in proportion for any less period than one year.

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

Lessee to determine if Magadi Lease determined

← Taken in rider

§ 4.—Provided always ~~and it is hereby declared~~ that if and whenever the said rent or any part thereof shall be in arrear for the space of 60 days next after the day when the same ought to be paid as aforesaid (whether the same shall or shall not have been legally demanded) or if there shall be any breach or non observance of any of the covenants on the part of the Lessees (whether negative or affirmative) herein contained or if the Lessees while the demised premises or any part thereof remain vested in them shall go into liquidation whether voluntary or compulsory (except with the consent in writing of the Government a voluntary liquidation for the purpose of reconstruction only) or suffer a receiver of their undertaking or any part thereof to be appointed by any Court of competent jurisdiction or commit any act which would render the Lessees liable to be wound up on petition or in the case of assigns of the Lessees not being a Corporation shall or any of them shall become bankrupt or make any assignment for the benefit of or enter into any arrangement for composition with their or his creditors then and in any of the said cases it shall be lawful for the Crown Agents or the Government although they may not have taken advantage of some previous default of the like nature at any time thereafter into and upon the demised premises or any part thereof in the name of the whole to re enter and the same to have again repossess and enjoy as in their former estate but subject to the provisions of Clause 10 of these presents And thereupon this Lease (and the liberties hereby granted) shall cease and determine but without prejudice to any right of action or remedy which may have accrued to the Crown Agents or

Proviso for re entry

the Government in respect of any antecedent breach by the Lessees of any of the covenants or provisions herein contained provided that this proviso for re-entry shall be subject to all such restrictions and conditions and such relief against forfeiture as shall for the time being be applicable under the laws of England to a proviso for re-entry contained in leases of similar property in England.

LESSEES'
COVENANTS

6.3.—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:—

To pay rent

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

As to user

~~(ii) The Lessees during the said term will not use nor suffer to be used the said Port of Kilindini and the Depot Works, Pier and Branch Railway now demised save and except for purposes directly connected with the concession of the Lessees of the Lake Magadi. In particular that the Lessees will not use nor suffer to be used the said Branch Railway for traffic other than the transportation from and to Shimanzi Pier of things incidental to the exporting of the said soda products nor will use nor suffer to be used the Pier save for the loading of vessels with the said soda products of Lake Magadi and the loading and unloading of coal and oil and other articles required for and incidental to the working of the concession of Lake Magadi and the supplying the said vessels with water and requirements incidental to the loading of the said soda products provided that thereby no harbour dues or other lawful charges are evaded: nor will in any way enter or attempt to enter into competition with the Government Piers. Provided always that it shall not be deemed a breach of this clause if part of any cargo of oil which is discharged into the storage tanks on the Lessees' premises is used for purposes other than those incidental to the working of the concession of Lake Magadi provided that the discharge of the said cargo is primarily for securing the Lessees' requirements incidental to such working and provided that no harbour or other dues payable in respect of any such oil so used for other purposes are hereby evaded.~~

Provisional.
Subject to consideration

Provided also that this restriction shall not prevent the user of the existing oil pipe line carried by the Shimanzi Piers and leading to the storage depot of the

user

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

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

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

(D) The Lessees shall not use or suffer to be used Shimanzi Pier or any part thereof in any way whereby any *port dues charges for tugs or pilotage* harbour dues or other lawful charges are or may be evaded. *provided always that the port dues payable by vessels using Shimanzi Pier and not going alongside any Government wharf, jetty or quay shall*

(E) The Lessees shall not use or suffer to be used Shimanzi Pier or any part thereof so as in any way to enter or attempt to enter into competition with any Government Pier. *not exceed 50% of the port dues payable by any vessel going alongside any Government wharf, jetty or quay.*

repair (iii) deliver
n repair.

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

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

in Lake
Track.

right entry
new and to
on notice.

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

to obstruct
right of way
public road.

(iv) The Lessees shall not obstruct or suffer to be obstructed the right of way excepted and reserved out of the demise hereby made or do or suffer to be done or anything whereby the construction of the public road under the liberty in that behalf excepted out of the demise hereby made shall or may be obstructed, impeded or prejudiced.

repair (iii) deliver in repair.

(A) The Lessees shall at all times keep the demised premises and all buildings erections and fixtures for the time being and from time to time thereon including (by way of description and not of restriction) the Branch Railway in good and substantial repair and condition and

working order and the same (except such fixtures and things as such of the same as shall have been abandoned by reason that they have become unnecessary for the further or proper working of the said Railway as the Lessees are by law entitled to remove) in good and

substantial repair and condition and working order deliver up to the Government at the expiration or sooner determination of the term hereby granted.

(subject to the provisions of Clause 10 of these Conditions)

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

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

(iv) The Lessees shall not obstruct or suffer to be obstructed the right of way excepted and reserved out of the demise hereby made or do or suffer to be done anything whereby the construction of the public road under the liberty in that behalf excepted out of the demise hereby made shall or may be obstructed, impeded or prejudiced.

in Lake

right entry and to on notice.

obstruct right of way public road.

until such time as the Government Oil Pier at Shumangi is ready for use
 British Imperial Oil Company (South Africa) Limited
 provided no harbour or other dues are hereby evaded.

See also Schedule B

~~(iii) The Lessees will at the expiration or (subject to the provisions of Clause 10 of these presents) the sooner determination of the term hereby granted deliver up to the Government the demised premises with all buildings and fixtures thereon except such fixtures and things as the Lessees are by law entitled to remove in such state and condition in all respects as shall be consistent with the due performance and observance of the provisions herein contained and in proper order for the future working of the Railway.~~

(v)

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

Not to assign
without licence

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

but this clause shall not extend to any accident damage claim or loss which may occur or be incurred or claimed in or by reason of the working of any Railway by the High Commissioner for Transport or authority for the time being and from time to time working or managing the Kenya and Uganda Railway unless the same shall have arisen from some neglect or default of the Lessees.

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

(xi) (x) The Lessees shall not at any time during the term hereby granted sell give barter or otherwise dispose of any arms or ammunition of any description to any native or permit or suffer any such sale gift barter or other disposition to be made by any employee or agent of the Lessees. No arms or ammunition to be sold to natives

(xii) (xi) The Lessees shall not at any time during the term hereby granted sell give barter or otherwise dispose of any spirituous liquor to any native or permit or suffer any such sale gift barter or other disposition to be made by any employee or agent of the Lessees or import or authorise the importation of any spirituous liquor into the Colony except for the use of the European agents or employees of the Lessees and in accordance with and subject to such rules as may from time to time be made by the Governor in that behalf. No spirituous liquor to be sold to natives nor imported except for Europeans

(xiii) (xii) If the Government shall at any time during the term hereby granted incur any expenditure in erecting or maintaining any sanitary works or regulations upon or in the neighbourhood of the ~~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 of Lessees to special sanitary measures

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

Covenant for quiet enjoyment

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

Lessees to maintain Magadi Railway

7.—The Branch Railway shall be maintained in working order by the Lessees at their own expense as from the 1st day of November 1924, and the General Manager or officers deputed by him shall have the right to inspect the Railway at any time.

Lessees to be and remain British

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

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

ALBEN to page 13.

(Clause 11. (11.A.))

but
the
right
of
the
Lessees

(A) The right without payment to use and work for the purpose of the Lessees' own business in connection with the working of the said deposits or Corporation of bonds under the Magadi Lease any lines of electric telegraphs and telephone on the said premises at the price hereinafter mentioned and the said options.

with... and all the assets and property whatsoever of the Lessees used for the purposes of or in connection with the Magadi Pier and Depot Works or any part thereof at the price hereinafter mentioned or a proportional part thereof upon giving to the Lessees one month's notice in writing in that behalf such notice to be given within one month after the termination of the Lease...

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

(ii) If the Government shall exercise this present right then from and after the completion of the purchase until the expiration or sooner determination of the Magadi Lease the Lessees shall be entitled to the following rights and privileges:

(A) The right to use and work any lines of electric telegraphs and telephone on the Magadi Pier and Depot Works without making any payment in respect thereof.

of such notice.
(A) be given in regard to part only of the property and assets of the Lessees as aforesaid

If option exercised the Lessees shall have certain rights

company or corporation as aforesaid as the case may be determine the demise hereby made without making any compensation but subject to the provisions of Clause 10 of these presents and without prejudice to any right of action or remedy of the Crown Agents or the Government in respect of any antecedent breach of any of the covenants by the Lessees or conditions herein contained.

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9.—At the expiration of the term of 99 years hereby granted (but not on the sooner determination of the said term) the ~~Magadi Pier and Depot Works including the Shimanzi Pier and Branch Railway~~ and all the assets and property whatsoever of the Lessees used for the purposes of or in connection with the ~~Magadi Pier and Depot Works~~ shall immediately on the expiration of the said term and free from all payment be and become the property of the Government.

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

10.—If this lease shall be determined otherwise than by effluxion of the said term of 99 years the Government shall have the right to purchase the ~~Magadi Pier and Depot Works~~ and all the assets and property whatsoever of the Lessees used for the purposes of or in connection with the ~~Magadi Pier and Depot Works~~ or any part hereof at the price hereinafter mentioned or a proportional part hereof upon giving to the Lessees one month's notice in writing in that behalf such notice to be given within one month after the determination of the Lease *as written within 1 month after the expiration of the lease to remove the Magadi Pier and Depot Works and the assets and property of the Lessees used for such purposes.*

Option of Government to purchase in case of determination

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

Option to purchase at any time

(ii) If the Government shall exercise this present right then from and after the completion of the purchase until the expiration or sooner determination of the Magadi Lease the Lessees shall be entitled to the following rights and privileges.

If option exercised the Lessees to have certain rights

(A) The right to use and work any lines of electric telegraphs and telephone on the ~~Magadi Pier and Depot Works~~ without making any payment in respect thereof.

or if such notice be given in regard to part only of the property and assets of the Lessees as aforesaid

Provided that in the exercise by the Lessees of the aforesaid right and privileges the full use and enjoyment by the Government of the property so purchased or any part thereof shall not be unduly or unreasonably prejudiced or affected.

Second RIDER to Page 14.

Notice of rights of purchase to be given to incumbrancers.

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

Property to be transferred free from incumbrances.

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

demised premises

option being given for the Pier and Depot Works.

Rights of purchase not to prejudice other rights

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

Table in Schedule (B) page 14 →

Provision as to Debentures

15.—In the event of Government purchasing the Magadi Pier and Depot Works or any part of it any sum for the time being outstanding on account of any loans, debentures or debenture stock and the interest thereon shall as from the date when the Government pay the Company the said purchase price cease to be a charge upon the Magadi Pier and Depot Works and shall thenceforth be a charge on the sum payable by the Government to the Lessees and every

Endorsement debenture stock and debentures

certificate of debenture stock and every debenture purporting to create or be secured by a charge upon the Magadi Pier and Depot Works shall bear an endorsement to this effect and as to the Government power of purchase hereunder.

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

Members or Officers of Government not to be personally liable

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

Certificate of the Governor

18.—Every approval, consent or notice to be given or served by or on behalf of the Government or the Crown Agents for the purposes of these presents shall be in writing under the hand of the Governor or of the Crown Agents or one of them or any person authorised on their behalf or of the General Manager and shall in accordance with circumstances either be delivered to and left for the Lessees at their office (if any) or at the address above mentioned or other the registered address of the Lessees for the time being in England or at their principal or last known place of business in the Colony.

Notices to be given to Lessees

to hand before execution of the present

19.—Except in cases (if any) in which these presents expressly provide to the contrary no failure or omission by the Lessees in the observance or performance of any of the stipulations, agreements or conditions herein contained and on the part of the Lessees to be observed or performed hereunder shall give rise to any claim or demand against the Lessees or in any manner operate to the prejudice of the Lessees or be deemed a breach of any covenant or obligation on the part of the Lessees hereunder whether expressed or implied if it be 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.

Force majeure

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

(v)
 24.—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

25.—The marginal notes hereto are for the sake of convenience Marginal notes 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