KMM 1 TKP 269

# Memorandum of Agreement

made and entered into by and between—

Mkabi Mama

(hereinafter styled the "GRANTOR"), in his capacity as CHIEF of the BANWATO PEOPLE, and

(hereinafter styled the "TRADER").

**WHEREAS** owing to the altered conditions prevailing in the Bañwato Territory, it is necessary to define the rights of Traders in the said Territory:

**NOW THEREFORE** the parties hereto have agreed, each with the other, as follows:—

1. The GRANTOR hereby grants to the TRADER (a) the right to remain in occupation of the trading site or stand situate in the Bañwato Territory at

Mhalogang

heretofore occupied by him; and (b) subject always to the TRADER complying with the provisions of the Proclamation of 10th June, 1891, relating to the issue of or renewal of Trading Licences, or to any existing or future amendment of such provisions, the permission to trade thereon in terms of any such Licence obtained by the TRADER.

(Or in the case of a new licence:

1. The GRANTOR hereby grants to the TRADER (a) the right to occupy, and erect buildings on, a trading site or stand in the Bañwato Territory for the purpose of carrying on trade (the situation and extent of such site or stand shall be pointed out by the GRANTOR); and (b) subject always to the TRADER complying with the provisions of the Proclamation of 10th June, 1891, relating to the issue of or renewal of Trading Licences, or to any existing or future amendment of such provisions, the permission to trade thereon in terms of any such Licence obtained by the TRADER.)

2. The right of occupancy of such trading site or stand shall as heretofore be at "the will of the GRANTOR," but the GRANTOR undertakes and agrees that he will not terminate the said right unless in the opinion of the GRANTOR, which opinion shall however be final and binding, there are reasonable grounds for so doing, and unless and until he has given to the TRADER not less than three calendar months' written notice of such termination, at the expiration of the period of which notice the said right shall forthwith terminate, without prejudice to any other right which the GRANTOR may have for damages, arrear rent or otherwise.

PROVIDED HOWEVER that if the TRADER by written notice to the GRANTOR within thirty days of such notice of termination having been given by the GRANTOR, disputes that there are in fact reasonable grounds for such termination, such dispute shall forthwith be submitted to the arbitration of the Resident Commissioner, according to the arbitration laws of the Cape Colony, and the Resident Commissioner shall thereupon as soon as possible hear the dispute and give his award, and if he shall decide that no reasonable grounds in fact did exist, then the said notice of termination shall be of no force or effect. If, however, the Resident Commissioner shall decide that any reasonable grounds for termination did in fact exist, this lease shall terminate at the end of the period of such notice of termination, or upon the date of the giving of his award, whichever is the later.

3. In respect of the said permission to trade and of the said right to occupy the said site or stand, the TRADER shall pay to the GRANTOR,

as from the 1st April 1938, a yearly rental of £15 (fifteen pounds). In the event of the TRADER carrying on business upon more than one site or stand, the TRADER shall pay a yearly rental of £15 (fifteen pounds) in respect of each additional site or stand. But if such additional site or stand be situated in one and the same village as some other site or stand occupied by the said TRADER, the TRADER shall pay a yearly rental of £7 10s. 0d. (seven pounds ten shillings) only in respect of each such additional site or stand. The rentals of existing sites or stands shall be paid on or before the 31st day of March 1940, and thereafter on or before the 31st January in each and every succeeding year. In respect of all new sites or stands, and in respect of transfers of businesses when the yearly rentals have not been paid, the rentals due shall be paid within three months of the date of occupation of any such site or stand, and thereafter on the 31st January in each succeeding year.

4. In the event of the TRADER failing to pay the aforesaid rent within three months after the due date thereof, the GRANTOR shall be entitled, without prejudice to all other rights which the GRANTOR possesses, to suspend the right of occupation of the said site or stand and to eject the TRADER therefrom until such arrear rent has been paid, and it is further specifically agreed that the failure to pay the rent within three months of due date shall be a "reasonable ground" for termination within the meaning of clause 2 of this agreement.

5. The TRADER shall not sub-let, assign or transfer any of his rights hereunder or any portion thereof or any interest therein without the written consent of the GRANTOR first being had and obtained.

In the event of the GRANTOR giving such consent, the sub-lease, assignment or transfer shall be made in terms of a written document and signed by the parties concerned.

6. On termination of the grant for any reason whatsoever, the TRADER shall be entitled to remove from the said site or stand such wood, iron, windows or doors as shall have been imported and used by the TRADER on to such site or stand for the construction of buildings, and shall be obliged forthwith to clear and level the site or stand and leave the same in a clean and tidy condition, and for the purpose of effecting such removal, cleaning and levelling the TRADER shall be entitled to occupy such site or stand for a period of three months after the date upon which the grant terminates. Before such removal the GRANTOR may, if the TRADER consents, take over such wood, iron, windows or doors at a valuation to be mutually agreed upon, between the parties, but the TRADER shall nevertheless be obliged to clear and level the site or stand as above provided unless the GRANTOR in writing agrees otherwise.

Apart from the above the TRADER shall not be entitled to compensation by the GRANTOR for any improvements or for goodwill.

On termination of this grant the well or wells used by the TRADER shall be left in good condition, and no compensation shall be paid by the GRANTOR to the TRADER in respect of any well or wells.

7. (a) The TRADER shall, in respect of every trading site or stand occupied by him, purchase or barter cattle and livestock in the customary manner from individual members of the Bañwato People.

(b) Should the TRADER (being a Trader who duly occupied a trading site or stand prior to the 1st April, 1938) fail, neglect or refuse in respect of any such site or stand to purchase or barter cattle or livestock in terms of paragraph (a) hereof, the GRANTOR shall be entitled forthwith to increase the rental of each site or stand in respect of which such failure, neglect or refusal has taken place, to £25 (twenty-five pounds) per annum for the current year, commencing with the date of his decision so to increase the rental.

(c) Should the TRADER (being a Trader who took occupation of any trading site or stand on or after the 1st April, 1938) fail, neglect or refuse in respect of any such site or stand to purchase or to barter cattle or livestock in terms of paragraph (a) hereof, the GRANTOR shall be entitled, without prejudice to any other right which he may have arising out of any such breach, forthwith to terminate and cancel the right of occupation and the permission to trade in respect of any such site or stand in regard to which such failure, neglect or refusal has taken place, and immediately to eject the TRADER therefrom.

KMM 1 TKP 269

(d) In deciding whether he shall increase the rental, or whether he shall terminate the right of occupation and the permission to trade in terms of paragraph (b) or (c) hereof respectively, the GRANTOR shall take into consideration the existence or otherwise of restrictions against the export of cattle into the Union of South Africa, but the GRANTOR'S decision will in any event be final and binding.

(e) In the event of the TRADER sub-letting, assigning or transferring his rights in or over any trading site or stand, the provisions of paragraph (c) of this clause shall apply in full to any such sub-lessee, assignee or transferee of any such site or stand, irrespective of the date of original occupation thereof.

(f) The TRADER shall not acquire or accept any cattle by purchase or barter unless the seller or barterer shall at the time produce to him a written consent from the Chief or Headman permitting such sale or barter, PROVIDED THAT such written permission shall not be necessary in respect of any cattle in or from any area in regard to which area the Chief has in writing notified the TRADER that no permits are required for the sale or barter of cattle therein or therefrom.

If the TRADER acquires or accepts any cattle by purchase or barter in breach of any of the provisions of this paragraph, the TRADER shall forthwith be liable to pay to the GRANTOR as and by way of ascertained and liquidated damages arising out of any such breach, the sum of £5 (five pounds) in respect of each head of cattle so acquired or accepted by him, without prejudice to any other rights the GRANTOR may have arising out of such breach.

(Or, in the case of a new licence:

If the TRADER acquires or accepts any cattle by purchase or barter in breach of any of the provisions of this paragraph, the GRANTOR shall be entitled, without prejudice to any other right which he may have arising out of any such breach, immediately to eject the TRADER from the said trading site or stand.)

8. The TRADER is entitled to water and grazing for his "Trade Cattle," and for the purpose may use the existing well (allotted to him), and with the prior written consent of the GRANTOR may dig additional wells.

In the event of a sub-lease, an assignment or the transfer of the trading site or stand, the TRADER shall not be entitled to retain the use of any well or wells, except with the prior written consent of the GRANTOR otherwise the use of all wells shall automatically pass with the site or stand to the incoming TRADER, but the TRADER shall be entitled to agree with the incoming TRADER for compensation for the wells from the latter.

Save for the right of the TRADER to graze and water his " Trade Cattle," the TRADER is prohibited from carrying on the breeding or ranching of cattle.

He may, however, keep a maximum of 50 head of cattle in all, for the purpose of producing milk.

THUS DONE AND EXECUTED at

this day of 19 , in the presence of the undersigned witnesses:

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2.

1.

2.

Chronicle, Byo.—38670.