

8-62 2M

Approved as to form by General Counsel,
January 23, 1962.

SOUTHERN PACIFIC COMPANY

151156

INDUSTRIAL LEASE

CG - 11

This Lease, made and entered into this 26th day of July, 1966

by and between the SOUTHERN PACIFIC COMPANY, a corporation, herein called "Railroad," and GEORGE KESSLER, an individual, doing business as Placer Beverage Co., Address: F, Diamond Springs, California, herein called "Lessee."

Witnesseth: That Railroad hereby leases to Lessee the premises of Railroad at or near Diamond Springs, Station, County of El Dorado, State of California, shown

~~enclosed within red lines~~ upon the print hereto attached, Railroad's Sacramento Division Drawing LD 5511, dated January 7, 1965, for the term of five (5) years from the First day of August, 1966,

upon the following terms and conditions:

1. Railroad reserves for itself, its successors, assigns and licensees, the right to construct, maintain and operate any existing tracks and existing, new and/or additional pipe, telegraph, telephone and power transmission lines upon, over and beneath the leased premises.

Lessee hereby acknowledges the title of Railroad to the leased premises, and agrees never to assail or resist said title.

2. Lessee agrees to pay rental at the rate of Twenty Dollars (\$ 20.00)

per month payable monthly in advance. If such rental is payable on a monthly basis and the effective date hereof is other than the first day of the month, then the rental will be prorated from the effective date to the first day of the following full calendar month.

Any privilege, sales, gross income or other tax (not including income tax) imposed upon the rentals herein provided to be paid by the Lessee, or upon the Railroad in an amount measured by the rentals received by Railroad, shall be paid by the Lessee, in addition to the amounts set forth herein, whether such imposition of tax be by The United States of America, the state in which the leased premises are located, or any subdivision or municipality thereof.

3. Said premises shall be used by Lessee solely and exclusively for the construction, maintenance and use of Lessee-owned improvement and related facilities, as a warehouse for the distribution of beverages.

Lessee agrees to comply with all applicable laws and regulations with respect to the use of the leased premises.

If the Lessee does not, within ninety (90) days, commence the use of the leased premises for the purposes herein mentioned, or if the Lessee discontinues such use for a period of ninety (90) days, the Railroad may at its option terminate this lease by giving fifteen (15) days' notice in writing to the Lessee. ~~provisions of this lease shall apply~~

4. Lessee agrees to keep the leased premises and all buildings and structures thereon free from rubbish and in a neat and safe condition and satisfactory to Railroad. Lessee shall maintain, at Lessee's sole cost and expense, in good condition and repair, satisfactory to Railroad, all buildings and structures upon said leased premises, except those owned by the Railroad. The leased premises and buildings and structures thereon shall not be used for displaying signs and notices other than those connected with the business of Lessee contemplated by this lease. Such notices and signs shall be neat and properly maintained. Railroad shall have the right to enter the leased premises at reasonable times to inspect the same.

5. Lessee agrees to pay, before they become delinquent, all taxes and assessments against the leased premises, or which might become a lien thereon, by reason of any buildings, structures or other property, real or personal, on the leased premises (except those owned by Railroad), or by reason of Lessee's activities. Railroad may at its option pay such taxes or assessments, and such payments will be repaid by Lessee on demand.

6. Subject to any lawful charges therefor, Lessee may receive service on any Railroad-owned track upon or immediately adjacent to the leased premises, provided that such use will not interfere with use of the track for railroad purposes. Railroad shall have the right to serve other patrons upon such track or extensions thereof and incident thereto may temporarily remove cars consigned to Lessee on said track without liability to Lessee. Railroad may at any time, in its sole discretion, terminate service to Lessee on such Railroad-owned track. Lessee shall secure the written consent of the owner before requesting service upon any private industrial track.

Lessee agrees to comply with the clearance regulations set forth on attached Exhibit "A," and, where greater clearances are required by statute or lawful order, Lessee shall provide such greater clearances. A minimum overhead clearance of twenty-five (25) feet above tops of rails shall be provided for wires above said track and for a horizontal distance of at least eight (8) feet six (6) inches from the centerline thereof. All doors windows or gates of any building or enclosure shall be of the sliding type or shall, when opened, -be swung away from the track when such building or enclosure is so located that said doors, windows or gates if opened toward the track would, when opened, be at clearances in violation of the clearances specified on said Exhibit "A." No pipe, conduit, structure, opening or excavation of any kind whatsoever shall be made or placed by Lessee beneath any track and no gate or other obstruction shall be constructed or maintained across said track without prior written approval from Railroad. No gunpowder, dynamite, gasoline, or other explosive material shall be piled or stored by Lessee upon the leased premises within one hundred (100) feet from nearest track.

The terms of this Section 6 shall not be deemed waived by either party except by written agreement.

7. In the event Lessee shall not promptly correct any default by Lessee hereunder after receipt of notice of such default from Railroad, Railroad shall have the right to terminate this lease forthwith and to retake possession of the leased premises. Waiver of any default shall not be construed as a waiver of a subsequent or continuing default. Termination of this lease shall not affect any liability by reason of any act, default or occurrence prior to such termination.

~~8. Either party hereto may terminate this lease upon thirty (30) days' written notice to the other party. In the event of such termination the Railroad shall be responsible for the cost of any work done on the leased premises after the termination of the lease.~~

9. Upon the expiration or termination of this lease, or any extension or renewal thereof, Lessee, without further notice, shall deliver up to Railroad the possession of the leased premises. Lessee, if not in default hereunder, shall be entitled, at any time prior to such expiration or termination, to remove from the leased premises any buildings or structures wholly owned by Lessee. Lessee shall restore said leased premises to the condition in which they existed at the time Lessee took possession. Upon the failure or refusal of Lessee to remove from the leased premises all buildings, structures and all personal property owned by Lessee, prior to the expiration or termination of this lease, said buildings, structures and personal property shall thereupon, at the option of Railroad, become the sole property of Railroad, or if Railroad so elects it may remove from the leased premises any buildings, structures and other personal property owned by Lessee, and Railroad may also restore the leased premises to substantially the condition in which they existed at the time Lessee took possession, all at the expense of Lessee, which expense Lessee agrees to pay Railroad upon demand. In the event of such failure or refusal of Lessee to surrender possession of said leased premises, Railroad shall have the right to re-enter upon said leased premises and remove Lessee, or any person, firm or corporation claiming by, through or under Lessee, therefrom.

10. Lessee shall not construct, reconstruct or alter structures of any character upon the leased premises without the prior written consent of Railroad. Lessee shall not commence any repairs (except emergency repairs) until fifteen (15) days after written notice to Railroad.

11. Lessee will fully pay for all materials joined or affixed to the leased premises, and pay in full all persons who perform labor upon the leased premises and will not suffer any mechanics' or materialmen's liens of any kind to be enforced against the leased premises for any work done, or materials furnished, at the Lessee's instance or request. If any such liens are filed thereon, Lessee agrees to remove the same at Lessee's own cost and expense and to pay any judgment which may be entered thereon or thereunder. Should the Lessee fail, neglect or refuse so to do, Railroad shall have the right to pay any amount required to release any such lien or liens, or to defend any action brought thereon, and to pay any judgment entered therein, and the Lessee shall be liable to the Railroad for all costs, damages, and reasonable attorney fees, and any amounts expended in defending any proceedings, or in the payment of any of said liens or any judgment obtained therefor. Railroad may post and maintain upon the leased premises notices of non-responsibility as provided by law.

12. In case the leased premises or any part thereof are in either the State of Arizona or Utah, Lessee will give Railroad and the lessor of Railroad, before allowing any construction, alteration or repair to be done upon the leased premises, a bond satisfactory in form and to be issued by some surety company to be approved by Railroad in a sum equal to the full contract price of such construction, alteration or repair, conditioned that the Lessee shall pay or cause to be paid all contractors, sub-contractors, laborers, operatives and other persons who may labor or furnish labor, materials or tools in the performance of such construction, alteration or repair.

13. With respect to any liability for loss, damage, injury or death arising from or incident to the use of the leased premises, each party agrees that it will assume and indemnify and hold harmless the other party against all liability, cost and expense caused by its actions or omissions (or the actions or omissions of its agents, contractors, employees or invitees) or by defective property in its possession, care, custody or control. In the event of any combination of such factors involving both parties, each shall assume and will indemnify and hold harmless the other party against all liability, cost and expense for loss of or damage to property in its possession, care, custody or control, and for injury or death of its agents, contractors, employees or invitees, and any liability to third parties shall be equally divided between the parties hereto. For the purpose of this Section 13, any violation by Lessee of the provisions of Section 6 hereof shall be deemed the sole cause of any loss, damage, injury or death arising therefrom. The provisions of this Section 13 are solely for the benefit of the parties hereto and shall not give rise to a claim or cause of action by or affect the liability of any other person.

W.P.S.

3-20, 1967

MAR 20 1967

EB 220-113



Mr. W. P. Swift:
Document Custody Bur.
~~Mr. W. G. Bell:~~
~~Mr. V. A. Wolfe:~~
Real Estate Department

Lease No. 151156 with Placer Beverage Co for

rental of property at Diamond Springs, Calif is now being billed
monthly (X)
quarterly {
semi-annually { } for \$ 20.00
yearly { }

Effective April 1967, this lease will be billed monthly
for \$ 120.00. quarterly (X) 4-10
semi-annually { }
yearly { }

G. TRABERT
By P.M.

Atten: Lease Desk

I N S E R T

20. Railroad shall also have the right to terminate this lease by written notice and to take exclusive possession of the premises in the event:

- (a) Lessee shall be adjudged a bankrupt.
- (b) Lessee becomes insolvent.
- (c) Any action or proceeding for debtor relief of Lessee be commenced by Lessee.
- (d) Lessee seeks general debtor relief by extra-judicial means.

Receipt of rent or other payments from any person for use of the leased premises shall not constitute a waiver of Railroad's right to terminate as above set forth. If there are two or more Lessees hereunder, or if Lessee is a partnership, Railroad's right to terminate shall arise in the event any one of the Lessees or partners is adjudged a bankrupt, becomes insolvent, seeks general debtor relief or commences or becomes subject to any of the proceedings set forth above.

21. In the event any essential portion of the improvements on the leased premises is so damaged by fire or other casualty as not to be restorable within ninety (90) days, either party may terminate this lease by written notice. If the improvements can be restored within ninety (90) days, Lessee shall promptly make such restoration at Lessee's own expense, failing in which Railroad may forthwith terminate this lease by written notice.

22. In the event all or any portion of the leased premises shall be condemned for public use, Lessee shall receive compensation only for the taking and damaging of Lessee's improvements. Any compensation or damages for taking said premises or Lessee's leasehold interest therein awarded to Lessee shall be assigned to Railroad.

23. It is agreed that in the event assessments for public improvements are made against the said leased premises, the rental in effect at such time shall be increased by six per cent (6%) per annum of the proportion of such assessments applicable to the said premises.

24. Lessee at Lessee's expense shall arrange for any utility services required by Lessee and shall pay for such services direct to the utility company furnishing same.

25. It is agreed Lessee may receive service on 50-feet of Railroad-owned trackage serving Lessee at the said leased premises.

26. Lessee, subject to the terms and conditions of this lease is hereby permitted to use the area shown by red outline on the said attached print as an access roadway.

The use of such area shall be non-exclusive, it being understood that Railroad reserves for itself, its agents, employees and licensees, the right to use said area jointly with Lessee. Railroad shall not be required to assume any expense in connection with maintenance of said roadway.

27. Lessee shall indemnify and save harmless Railroad, its successors and assigns, against all liability, claims, costs and expense for loss of or damage to the property of any party hereto, or of third persons, and for injuries to or deaths of any party hereto, or their agents, employees or invitees, or third persons, caused by or arising out of the maintenance or use of said roadway by Lessee, Lessee's agents, employees or invitees, unless caused by the negligence of Railroad, either solely or in conjunction with the negligence of some person or persons other than Lessee, Lessee's agents, employees or invitees, and not involving Railroad's trains, engines or railroad cars.

28. Lessee, subject to the terms and conditions of this lease, is hereby permitted to construct, repair, maintain and use a private roadway, across the tracks and upon the property of Railroad in the location shown by green outline on the said attached print.

29. Lessee, at Lessee's expense, shall construct and maintain said roadway in a good and safe condition acceptable to Railroad. Lessee shall keep said roadway and the flangeways of the tracks thereon free and clear of all rubbish, debris and any other materials. Roadway signs, whistle signs and stop signs shall be constructed and maintained at the expense of Lessee at such locations and in such form as may be designated by Railroad. Lessee shall not perform any work of construction or repair on said roadway (except emergency repairs) unless Railroad's Division Superintendent is given five (5) days' advance notice thereof and the approval of Railroad for such work is obtained in writing. Lessee agrees to reimburse Railroad for all cost and expense incurred by Railroad in connection with the construction and maintenance of said roadway and said signs.

30. All vehicles shall come to a complete stop before crossing the tracks at the above location, and shall not proceed across said tracks until it has been ascertained that it is safe to do so. Lessee shall not obstruct, or interfere with, the passage of Railroad's trains.

31. In consideration of the exposure to hazard of the operations of Railroad by reason of the construction, maintenance and use of the said roadway, across the said property and Railroad's tracks, Lessee does hereby release and agree to indemnify and save Railroad

harmless from and against all liability, claims, costs and expenses for loss of or damage to the property of either party hereto or of third persons, and for injuries to or deaths of Lessee or the agents, employees or invitees of Lessee or third persons or the employees of Railroad caused by or arising out of the presence, maintenance, use or removal of said roadway, regardless of any negligence or alleged negligence on the part of any employee of Railroad.

The word "Railroad" as used in this Section shall be construed to include, in addition to Railroad, the lessor, successors, assigns and affiliated companies of Railroad, and any other railroad company that may be lawfully operating upon and over the tracks crossing said roadway, and the officers and employees thereof.

Lessee, upon request, will provide Railroad with certified copies of insurance in form and amounts satisfactory to Railroad insuring the liability of Lessee under this lease.

32. This lease is made upon the express condition that the use of the leased premises hereunder shall be made in connection with the receipt and delivery of freight by rail.

33. Notwithstanding anything to the contrary contained herein, Railroad shall have the right to terminate this lease in whole or in part upon ninety (90) days' notice to Lessee to that effect if in the judgment of Railroad the use of the leased premises, or any part thereof, is required for construction, maintenance or use of transportation, communication or railroad facilities.

Y-22
3-16

6" Pk. Domestic Water

Corr

33+30 (Sealed)

Iron Culv.

RT. 0/4 100.80

MISSOURI
FLY

+022 Xing Sign 102 Lt

16" Corr Iron Pipe Culvert 122
39+45 (Sealed)

+46 Road Xing
2940+30 X-ing Sign 46 Lt
2940+65 C.C. T2

TEL
LINE

36" Wood Pipe 100.90

2941+85 E.C.

Opp 2942+53
4175 E 15' Roadway

2943+40 B.C. T3

2944+30 C.C. T2

2945+75 C.C. T3

8120 End S.P. Co.
2946+50 E.C. T2

8120 End S.P. Co.
2946+50 E.C. T2

Road Crossing RH 445

13' Dwelling

972
PS. 31578

Legend

S.P. Co R. of W. Lines

Prop. Ground Lease 0286 R1

Red Prop. Track Lease

DIAMOND SPRINGS
Proposed Lease for
George Kessler dba
Ripper Beverage Co.
Jan. 7, 1965

SOUTHERN PACIFIC COMPANY
Pacific Lines

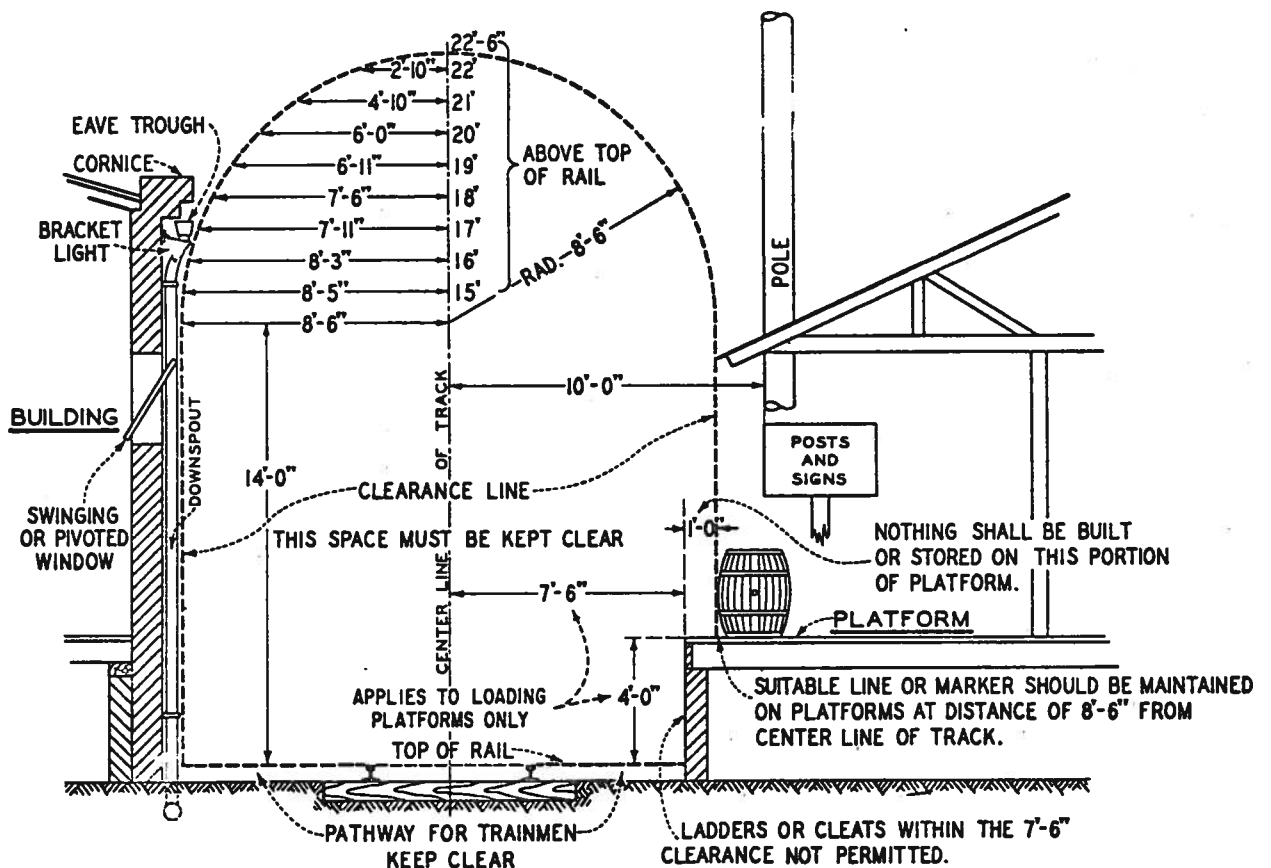
Sacramento DVM
DRAWING L05511

**TYPICAL
CLEARANCE OF STRUCTURES FROM RAILROAD TRACKS
AS PRESCRIBED BY
PUBLIC UTILITIES COMMISSION - STATE OF CALIFORNIA**

GENERAL ORDER NO. 26-D

(EFFECTIVE FEBRUARY 1, 1948)

FOR NEW WORK AND RECONSTRUCTION OF EXISTING FACILITIES ADJACENT
TO STANDARD GAUGE RAILROAD TRACKS TRANSPORTING FREIGHT CARS.



14. In case Railroad shall successfully bring suit to compel performance of, or to recover for breach of, any covenant, agreement or condition herein written, Lessee will pay to Railroad reasonable attorney fees in addition to the amount of judgment and costs.

15. In case Lessee shall (except by Railroad) be lawfully deprived of the possession of the leased premises or any part thereof, Lessee shall notify Railroad in writing, setting forth in full the circumstances in relation thereto, whereupon Railroad may, at its option, either install Lessee in possession of the leased premises, or terminate this lease and refund to Lessee the pro rata amount of the rental for the unexpired term of the lease after the receipt of such notice, whereupon no claims for damages of whatsoever kind or character incurred by Lessee by reason of such dispossession shall be chargeable against Railroad.

16. In case Lessee holds over the term of this lease, with the consent of Railroad, such holding over shall be deemed a tenancy from month to month, and upon the same terms and conditions as herein stated.

17. Any notice to be given by Railroad to Lessee hereunder shall be deemed to be properly served if delivered to Lessee, or if deposited in the post office, postpaid, addressed to Lessee at the leased premises or to last known address.

18. Time and specific performance are each of the essence of this lease.

19. Sections 20 to 33 inclusive on the attached insert are hereby made parts of this lease.

THIS LEASE shall inure to the benefit of and be binding upon the heirs, administrators, executors, successors and assigns of the parties hereto, but shall not be assigned or subleased by Lessee without the prior written consent of Railroad.

IN WITNESS WHEREOF, the parties hereto have executed this lease in duplicate the day and year first above written.

SOUTHERN PACIFIC COMPANY,

By V. A. Wolfe
(Title) V. A. Wolfe Mgr., Real Estate Dept.

WITNESSED BY:

George Kessler
(See Note) (Lessee)
George Kessler, doing business as
Placer Beverage Co.

DESCRIPTION CORRECT:

Division Engineer.

NOTE:—If an incorporated company, lease should be executed by an authorized officer thereof and his title indicated; otherwise signatures should be witnessed by an employe of Railroad, if practicable, if not, by a disinterested party.

JSP

Form approved:

Form of Execution Approved:

E. J. Maron
Attorney

R. J. Lachney

General Attorney

151156