The following 6 original ordinances were sent to King County Recording in December, 1997 for recording but were lost:

3367
3369
3372
3374
3375
3380

6/16/00 - Per Deputy City Attorney, Tom Brubaker, the copies of these ordinances should be used as the originals, and only Ord. 3369 needs to be re-sent for recording.
ORDINANCE NO. 3380

AN ORDINANCE of the City Council of the City of Kent, Washington, granting to the Union Pacific Railroad Company, a Utah corporation, its successors and assigns, the right, privilege and authority to construct, maintain and operate a railroad spur track upon and across South 196th Street in the City of Kent, King County, Washington.

WHEREAS, pursuant to the terms of a franchise ordinance of the City of Kent (Ordinance 2309), passed on September 8, 1981, the Union Pacific Railroad Company, a Utah Corporation ("UPRR") constructed, maintained and operated a railroad spur track at common grade upon and across South 196th Street in the City of Kent, the centerline of said street in the North 1/2 of Section 2, Township 22 North, Range 4 East, W.M., located in King County, Washington; and

WHEREAS, Ordinance 2309, by the terms of its Section 10, was effective as a franchise grant to UPRR for ten years; and

WHEREAS, on or about October 13, 1991, the franchise granted in Ordinance 2309 expired by the terms of Section 10 of that Ordinance; and

WHEREAS, UPRR is currently operating the subject spur crossing without a franchise; and

WHEREAS, a separation of grade of said crossing is neither practicable or justified; NOW, THEREFORE,
THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The foregoing recitals are incorporated into this Ordinance as if fully set forth herein.

SECTION 2. The City of Kent, Washington, ("City") grants to the Union Pacific Railroad Company, a Utah Corporation, its successors and assigns ("UPRR"), subject to all conditions contained in this Ordinance, the franchise and privilege of maintaining and operating one railroad spur track at common grade upon and across South 196th Street in the City of Kent, Washington, at the location described in Exhibit A, provided that the maintenance and operation of this track shall be performed in a manner consistent with the terms and conditions of this franchise ordinance and satisfactory to the City's Public Works Director and any other applicable authority.

SECTION 3. UPRR shall maintain and operate this track at common grade with South 196th Street. If the City determines that the public use and necessity require that the configuration and/or grade of South 196th Street be changed in location, width, elevation, super elevation, or any other aspect, then UPRR shall alter its track and crossing to conform with the changed configuration and/or grade. The City's Public Works Director must approve the design of any alteration to this track and crossing before UPRR commences construction. The City shall use its best efforts to provide reasonable notice to UPRR of its decision to change South 196th Street. UPRR shall coordinate construction of the planned alterations to its track and crossing with the City so as not to delay the City's plans for the street. In any event, UPRR shall complete its spur track work no later than the date the City completes its work on South 196th Street, unless the City gives its written approval to UPRR extending the time for the spur work.
SECTION 4. UPRR, at no cost to the City, shall maintain, operate and alter this track and crossing across South 196th Street as this street now exists or as the street may change, alter or modify in any manner during the term of this franchise, if the City requires the change. However, this franchise shall not prevent UPRR from charging any other party to which UPRR may have granted or assigned an interest in this track, crossing or franchise all or a portion of the cost of maintaining, operating or altering this track and crossing.

SECTION 5. UPRR, at its sole expense, shall replace the existing crossing pad with a crossing pad of a type and design approved by the City's Public Works Director across the entire right-of-way, including sidewalks, when requested by the City. UPRR shall install signalized gate arms at the crossing upon the City's request. UPRR shall install the crossing pad or gate arms within six (6) months from the date it receives notification from the City to make these changes; however, if these changes are subject to prior authorization from the Washington Utilities and Transportation Commission ("WUTC"), then this six (6) month time period shall apply from the date of WUTC authorization or approval.

UPRR's failure to install these items within this six (6) month period shall immediately terminate this franchise ordinance, with no notice required, and UPRR, its customers, agents and assigns, shall immediately lose all right and authority to use this crossing. Accordingly, the City may, at its sole option, restrict, block, close or remove the track and crossing.

SECTION 6. UPRR shall not store railroad cars within or upon the City's South 196th Street right of way, nor shall UPRR stop cars within this right of way for switching operations, nor shall UPRR use this track or crossing in any manner that unreasonably interferes with travel within the City's right of way. Moreover, UPRR shall not allow railroad traffic to utilize this track and crossing from 6:00 a.m. to 9:00 a.m. and
3:00 p.m. to 6:00 p.m. daily. However, the City's Public Works Director is authorized to shorten or remove these time restrictions, either permanently or temporarily, if he or she determines, in his or her sole discretion, that modification of these time restrictions would not impair the public health, safety and welfare.

SECTION 7. The City maintains the same control over South 196th Street within this franchise area as it has over other public streets within the City's jurisdiction. This franchise shall not restrict the rights of the City or other franchise holders in the City to enter upon South 196th Street within this franchise area for the purpose of locating, relocating, constructing, maintaining, repairing, or removing any public works, utilities, or facilities under or over this track and crossing, but this work shall not unnecessarily interfere with the movements of railroad traffic over this track and crossing.

SECTION 8. The City may require signalization, gates, sawbucks, signs, or other traffic flow control, warning or protective devices or measures to protect the public health and safety. UPRR shall construct, operate and maintain these requirements at no cost to the City. Further, UPRR will construct or install these requirements promptly, but in any event within one year from the date the City issues its requirements; however, if approval of these requirements is subject to prior authorization from the WUTC, then this one year time period shall apply from the date of WUTC authorization or approval.

SECTION 9. UPRR shall defend, indemnify and hold the City, its officer, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorney fees, arising out of or in connection with the performance of this franchise ordinance, but only to the extent of UPRR's negligence or comparative fault. This indemnification includes liability for crossing design, signalization design, and/or maintenance, and road maintenance within the crossing area. It also includes any failure or omission on the part of UPRR to perform any action required by this franchise.
The City's inspection or acceptance of any of UPRR's work when completed shall not be grounds to avoid any of these covenants of indemnification.

No act, inspection, approval or omission by the City shall affect UPRR's obligation to fully defend, indemnify and hold harmless the City, its officials, officers, employees, agents and volunteers.

The provisions of this section shall survive the expiration or termination of this franchise ordinance.

**SECTION 10.** Nothing granted in this franchise shall release UPRR from obtaining all permits or other authorizations required by the City to maintain, operate, repair or alter the track and crossing or to do any of the work contemplated by this franchise ordinance.

**SECTION 11.** If the City finds that UPRR has failed to comply with any term or condition of this franchise, as determined by the City, UPRR's failure to comply shall constitute a breach of this franchise. In the event of UPRR's breach, the City may revoke this franchise after giving UPRR 30 days prior written notice. This notice shall also state the grounds for revocation. Once revoked, UPRR, its customers, agents and assigns, shall immediately lose all right and authority to use this crossing, and the City may, at its sole option, restrict, block, close or remove the crossing.

**SECTION 12.** If the spur crossing that is the subject of this franchise has not been in use for one (1) year or longer, this franchise shall automatically be revoked. Once revoked, UPRR, its customers, agents and assigns, shall immediately lose all right and authority to use this crossing, and the City may, at its sole option, restrict, block, close or remove the crossing.
SECTION 13. The franchise privileges granted in this ordinance shall be effective for ten (10) years from and after the effective date of this ordinance.

SECTION 14. UPRR shall have no right to receive any award in condemnation, whether direct or inverse, as a result of this franchise.

SECTION 15. UPRR shall pay all the City's reasonable municipal costs, expenses, or liabilities incurred by the City because of this franchise.

SECTION 16. The failure of the City to insist upon strict performance of any of the terms and rights contained herein, or to exercise any option herein conferred in one or more instances, shall not be construed to be a waiver or relinquishment of those terms and rights and they shall remain in full force and effect.

SECTION 17. In any claim or lawsuit for damages arising from either party's performance of this franchise ordinance, each party shall be responsible for payment of its own legal costs and attorney's fees incurred in defending or bringing that claim or lawsuit; however, nothing in this subsection shall limit the City's right to indemnification under Section 9 of this franchise ordinance.

SECTION 18. No waiver, alteration, or modification of any of the provisions of this franchise ordinance shall be binding unless in writing and signed by a duly authorized representative of the City and UPRR.

SECTION 19. Any assignment of this agreement by UPRR without the written consent of the City shall be void.

SECTION 20. If any one or more sections, subsections, or sentences of this ordinance are held to be unconstitutional or invalid, such decision shall not affect the
validity of the remaining portion of this ordinance and the same shall remain in full force and effect.

SECTION 21. UPRR shall, within thirty (30) days from the date of passage of this ordinance, file with the City Clerk its acceptance of the terms, provisions and conditions of this franchise.

SECTION 22. This ordinance shall take effect and be in force five (5) days from the time of its final approval and passage as provided by law.

ATTEST:

BRENDA JACOBER, CI
PASSED: 9 day of December, 1997.
APPROVED: 9 day of December, 1997.
PUBLISHED: 12 day of December, 1997.

I hereby certify that this is a true copy of Ordinance No. 3380, passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.

BRENDAL JACOBER (SEAL)
BRENDA JACOBER, CITY CLERK
A strip of land 60.0 feet in width, situate in South 196th Street in the North Half (N1/2) of Section 2, Township 22 North, Range 4 East of the Willamette Meridian, City of Kent, King County, State of Washington, said strip of land being all of that land lying between lines concentric with and 30.0 feet on each side of the following described centerline, and said centerline prolonged:

Commencing at the southeast corner of Lot 11, Block 6, as shown on the plat of Southcenter Corporate Park, recorded under File No. 8003140871 in the records of said County;

thence along the south line of said Lot 11, North 88 degrees 59 minutes 42 seconds West, 14.59 feet to the TRUE POINT OF BEGINNING, said point being on a non-tangent curve concave southeasterly, from which point a radial line bears South 67 degrees 11 minutes 09 seconds East, 459.28 feet; thence southerly along said curve through a central angle of 7 degrees 52 minutes 13 seconds, 63.09 feet to the terminus of said centerline.

EXHIBIT A